SUPREME COURT OF THE UNITED STATES.

No. 245.

JAMES FRANCIS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

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a THE UNITED STATES OF AMERICA, *ss:*

To the United States of America and Wm. A. Grover, attorney of said United States for the district of Mo., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the districts of Missouri, wherein James Francis is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Treat, one of the judges of the circuit court for the districts of Missouri, this 16th day of May, in the year of our Lord one thousand eight hundred and sixty-four.

SAMUEL TREAT.

I acknowledge due service of the within writ upon me in the eastern district of Missouri this 30th day of May, A. D. 1864.

WM. N. GROVER,
U. S. Att'y for Eastern Dist. of Mo.

b UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the circuit court of the United States for the districts of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at April term, A. D. 1864, between the United States of America, libellants, and James Francis, petitioner and plaintiff in error, a manifest error hath happened to the great damage of the said James Francis, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Roger B. Taney, chief justice of the said Supreme Court, this 16th of May, in the year of our Lord one thousand eight hundred and sixty-four.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the district of Missouri, dated as aforesaid.

BEN. F. HICKMAN,
Clerk C. C. U. S., Missouri District.

Allowed by—

SAMUEL TREAT,
Judge of U. S. Dist. Court of East. Dist. of Missouri.

In obedience to the within writ of error, I herewith return and annex of copy of the record and proceedings of the circuit court of the United States for the districts of Missouri as had in the cause therein named.

Given under my hand this 13th day of Dec'r, A. D. 1864.

BEN. F. HICKMAN, *Clerk of said court.*

1 MISSOURI DISTRICTS, *sct.:*

Pleas before the honorable the judges of the circuit court of the United States for the districts of Missouri, at April term, in the year of our Lord 1864, in case No. 939 of the United States, libellant, *ag'st* two hundred and sixty-nine and a half bales of cotton, bearing the marks C. S. A. and other marks—appeal from the district court of the United States for the eastern district of Missouri.

Be it remembered, that heretofore, to wit, on the first day of September, 1863, come the claimants in the above-styled cause and file in the office of the clerk of the circuit court of the United States for the districts of Missouri the transcript of the record and proceedings of said cause from the district court of the United States for the eastern district of Missouri, viz:

Transcript from dist. court.

UNITED STATES OF AMERICA, *Eastern District of Missouri, ss:*

Be it remembered, that on the 18th day of October, in the year of our Lord eighteen hundred and sixty-two, there was filed in the clerk's office of the district court of the United States of America in and for the eastern district of Missouri, by William W. Edwards, esquire, attorney of said United States in and for said eastern district, a libel of information, in case No. 939 of the United States, libellant, against two hundred and sixty-nine and a half bales of cotton, bearing the marks C. S. A. and other marks; which libel of information is in the words and figures following, to wit:

2 *Libel of information.*

UNITED STATES OF AMERICA, *Eastern District of Missouri, ss:*

In the district court of the United States for said eastern district.

To the Honorable Samuel Treat, judge of said court:

The libel of information of Wm. Waller Edwards, attorney of the United States for the said eastern district of Missouri, who, being here in his own proper person, sues in the name and on behalf of the United States against two hundred and sixty-nine bales of cotton, and a half bale of cotton, bearing the marks C. S. A. and other marks, and against all persons lawfully intervening for their interest therein, in a cause of seizure and forfeiture, confiscation and condemnation, to the United States, alleges and articulately propounds as follows:

Firstly. That said two hundred and sixty-nine and a half bales of cotton are now at the city of St. Louis, in said eastern district, the said property having been brought from a certain district in the State of Mississippi, as hereinafter mentioned, into the said eastern district, and that the same is now in the possession and custody of the marshal of this court.

Secondly. That the President of the United States, on the 13th day of April, A. D. 1861, issued his proclamation in which he declared that the laws of the United States were opposed and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the marshals by the law; and on the 16th day of August, 1861, issued his certain other proclamation in which he declared that the inhabitants of the State of Tennessee, Alabama, Arkansas, and Mississippi, and certain other States of the United States, were in a condition of insurrection against the United States.

3 Thirdly. That the President of the United States, on the 25th day of July, in the year of our Lord eighteen hundred and sixty-two, issued his certain other proclamation, in pursuance of an act of Congress entitled "An act to suppress insurrection, to punish treason and rebellion, to

seize and confiscate the property of rebels, and for other purposes," approved July 17, 1862, and particularly of the sixth section thereof, by which last-named proclamation he proclaimed to and warned all persons within the contemplation of said sixth section to cease participating in aiding, countenancing, or abetting the existing rebellion against the government of the United States, and to return to their proper allegiance to the United States on pain of the forfeiture and seizure as within and by said sixth section provided; which said proclamation was a public warning and proclamation duly made and given by the President of the United States on the 25th day of July, in the year last aforesaid.

Fourthly. That on the first day of September, A. D. 1862, certain persons whose names are to the said attorney of the United States unknown, they being then and there inhabitants of the said State of Mississippi, did purchase and acquire, and sell and give the said above-described property, with intent to use and employ the same, and suffer the same to be used and employed in aiding, abetting, and promoting the said insurrection and resistance to the laws, and in aiding and abetting certain persons engaged therein; that the said property was purchased and acquired, given and sold for said purposes and in said manner on the day last aforesaid, and long before the same was brought out of the said State of Mississippi; that certain persons, whose names are to the said attorney unknown, being then
and there the owners of said property, did then and there knowingly
4 use and employ, and consent to the use and employment of said prop-
erty as aforesaid, and the said property was then and there so used and employed; that said property at said last-named date, and long before the same was brought out of the said State of Mississippi into the other parts of the United States, was the property of insurrectionists in arms against the government of the United States; that said insurrectionists sold and gave said property with intent to suffer the same to be used and employed as aforesaid to certain persons who styled themselves agents of the Confederate government, and who were then and there rebels in arms and aiding and abetting the rebels in arms against the government of the United States; that said property was held by the so-called agents as the property of insurrectionists in arms, and was used as their property to aid, abet, and promote said insurrection and insurrectionists. All of which is contrary to the statute of the United States approved August 6, 1861, entitled "An act to confiscate property used for insurrectionary purposes."

Fifthly. That said property, to wit, the two hundred and sixty-nine and a half bales of cotton aforesaid, was originally taken, procured, and obtained on the twenty-sixth day of September, A. D. 1862, in the said State of Mississippi; that it was then and there taken, procured, and obtained from certain persons who, on and after the 25th day of September, A. D. 1862, were engaged in armed rebellion against the government of the United States, and in aiding and abetting such armed rebellion; that said persons, so engaged as aforesaid, had, on said day and year last named, possession, custody, and control of said cotton, and that the same was taken out of their
possession and brought into said State of Arkansas within the lines
5 of the army of the United States; that up to the time when said cot-
ton was so taken and brought as aforesaid the same was in said State of Mississippi; that on said 26th day of September, up to the time when said property was so taken, it was held and possessed by certain persons styling themselves the agents of the Confederate States of America, which persons had been publicly warned by the President of the United States as aforesaid, but who, for more than sixty days after such public warning and proclamation, continued to countenance, aid, and abet said rebellion; that said property, so being the property of said insurrectionists,

was by them then and there held and used to countenance, aid, and abet said rebellion, all of which is contrary to the form of the statutes of the United States hereinbefore mentioned, and especially of said act of July 17, 1862, above described.

Sixthly. That said property was taken, procured, and obtained in said State of Mississippi, on said 26th day of September, 1862, as the property of persons then and there aiding and abetting such rebellion against the government of the United States; that as such property it was brought to the Mississippi River by government wagons in charge of agents of the government of the United States, and put aboard boats of the said government and conveyed by water to the town of Helena, in the said State of Arkansas, where it was held by the agents of the said government; that it was afterwards brought to the town of Memphis, in said State of Tennessee, and thence by agents of the said government to the port of St. Louis, where it now lies as aforesaid.

6 Seventhly. That by reason of the premises and by virtue of the said acts of Congress hereinbefore pleaded, the said property became and now is forfeited and confiscated to the United States to the uses in the said acts of Congress mentioned.

Eighthly. That all and singular the premises are true and within the jurisdiction of this court. Wherefore the said attorney, on behalf the United States, prays that the proper process and monition may issue from this court against said property and against all persons claiming any interest therein, and that the same may be decreed to be forfeited and confiscated to the United States, and may be condemned and sold, and for such other and further relief as may be just and proper in the premises.

(Signed) WM. W. EDWARDS, *U. S. Dist. Att'y.*

And at a special term of said district court begun and holden at the city of St. Louis, in said district, on Saturday, the 18th day of October, in said last-mentioned year, the following proceedings took place in this cause, to wit:

Order for warrant of detention.

This day came the United States, by district attorney, who filed his libel of information in this cause. And it appearing to the court from the return of the marshal on the warrant of arrest heretofore issued in case No. 934, in said court, that he had already arrested said two hundred and sixty-nine and a half bales of cotton under said warrant of arrest, on motion of said district attorney the court ordered that a warrant of detention be issued in this cause. And thereupon, on said eighteenth day of October, in said last-mentioned year, there was issued out of the clerk's office of said district court a warrant of detention and monition, in the usual form, according to the rules and practise of said court, which warrant is in the words and figures following, to wit:

7 *Warrant of detention and monition.*

UNITED STATES OF AMERICA, *Eastern District of Missouri, ss:*

The President of the United States of America to the marshal of said United States in and for said district, greeting:

Whereas a libel of information has been filed in the district court of said United States in and for the eastern district of Missouri, on the eighteenth day of October, in the year of our Lord eighteen hundred and sixty-two, by Wm. W. Edwards, attorney of said United States in and for said district, on behalf of the United States, libellant, against two hundred and sixty-nine

and a half bales of cotton, bearing the marks C. S. A. and other marks, in a cause, civil and maratime, of seizure and forfeiture under the acts of Congress of 6 August, 1861, and 17th July, 1862, for the reasons and causes in said libel mentioned, and praying the usual process and monition of said district court in that behalf to be issued, you are hereby commanded to detain in your possession for safe custody the said 269½ bales of cotton marked C. S. A. and other marks, and you are commanded to keep safely all property so arrested by you and detain the same, subject to the further order of said district court, unless sooner discharged from your custody according to law or the rules of said district court. And you are further commanded to cause public notice of such arrest of said property, and of the time assigned for the return of this warrant and the hearing of said cause, to be given by publication in the "Missouri Republican," a public newspaper printed at the city of St. Louis, in said district, and by like publication also to admonish and summon all persons claiming any interest in said 269½ bales of cotton, or knowing or having anything to say why the same should not be condemned and sold, to answer the prayer of said libel of in-
8 formation in the above-named case, and also the libel of information in case No. 934, heretofore filed against said cotton, that they be and appear before said district court, at a return term thereof to be begun and holden at said district court's room in the city of St. Louis, in said district, on the first Monday, the first day of the month of December next, at ten o'clock in the forenoon, (when and where said cause will be heard,) then and there to interpose their claims and answer said libels, and make their allegations in that behalf; and of what you shall have done in the premises do you also then and there make return, together with this warrant.

Witness the Honorable Samuel Treat, judge of said district court, this eighteenth day of October, in the year of our Lord eighteen hundred and sixty-two. Issued at my office, in said city of St. Louis, under the seal of said district court, the day and year last above written.

[SEAL.] (Signed) BEN. F. HICKMAN,
Clerk of said District Court.

And on the twenty-ninth day of November, in said last-mentioned year, there was filed in the clerk's office of said district court by Daniel Wolf, a claim to 93 bales of said cotton, in this cause, in accordance with the practise of said court and the 26th rule established for the district court by the Supreme Court of the United States, which claim is in the words and figures following, to wit:

Claim of Dan'l Wolf to 93 *bales of cotton.*

UNITED STATES OF AMERICA, *Eastern District of Missouri:*

In the district court of the United States in and for said district, No. 939.

THE UNITED STATES OF AMERICA
vs. } Libel.
269½ BALES OF COTTON.

To the Honorable Samuel Treat, judge of said district court:

The claim of Daniel Wolf for ninety-three bales of said two hun-
9 dred and sixty-nine and a half bales of cotton alleged in said libel to be marked C. S. A. and other marks made in the above-entitled cause, alleges as follows:

First. That said claimant is the true and lawful and bona fide owner of said ninety-three bales of said two hundred and sixty-nine and a half bales of cotton, and that no other person is the owner thereof.

Second. That said owner resides in the city of Cinnatti, in the State of Ohio.

Third. That said 93 bales of cotton claimed and owned by this claimant are especially identified by the marks up each bale of said cotton of the letters D. W., there being, however, other marks upon some of said bales.

(Signed) R. S. HART, *Proctor for Claimant.*

THE UNITED STATES OF AMERICA, *Eastern District of Missouri:*

Ralph S. Hart makes oath that he is the attorney and agent of the said Daniel Wolf for the prosecution of the within claim; that he has reason to believe and does believe that the allegations of said claim are true as therein stated; that the said claimant, Daniel Wolf, is not a resident and is not now within the said eastern dist. of Missouri, and that affiant's means of knowledge is derived from statements of Alfred Spink, through whom said Wolf claims said cotton.

(Signed) R. S. HART.

Subscribed and sworn to by said affiant, R. S. Hart, before me, at office, in the city of St. Louis, in said district, this 25th day of November, A. D. 1862.

(Signed) F. A. WERNER,
Com'r of U. S. Circuit Court for the Districts of Missouri.

And on the first day of December, in said last-mentioned year, there was filed in the clerk's office of said district court, by William M. McPherson, a claim to 147 bales of said cotton, in this cause, in accordance with the prac-
tise of said court and the 26th rule established for the district courts
10 by the U. S. Supreme Court, which claim is in the words and figures
following, to wit:

Claim of Wm. M. McPherson to 147 *bales.*

UNITED STATES OF AMERICA, *Eastern District of Missouri, ss:*

In the district court of said United States in and for said district, in cause No. 939, A. D. 1862, of United States, libellant, against 269½ bales of cotton, in admiralty.

To the Honorable Samuel Treat, judge of said district court:

The claim of Wm. M. McPherson, made in the above-entitled cause, alleges as follows:

First. That the said claimant is the true and bona fide owner of one hundred and forty-seven bales of the cotton libelled, and that no other person is the owner thereof.

Second. That said owner resides at 136 Locust street, in the city of St. Louis, in said eastern district.

(Signed) WM. M. McPHERSON.

UNITED STATES OF AMERICA, *Eastern District of Missouri, ss:*

Wm. M. McPherson, being duly sworn, deposes and says that to the best of his knowledge and belief the allegations in the foregoing claim are true, and that he has put in the above claim as the owner of said 147 bales of cotton.

(Signed) WM. M. McPHERSON.

Subscribed and sworn to by the above-named affiant this first day of December, 1862, before me, at my office, in the city of St. Louis, in said eastern district of Missouri.

(Signed) BEN. F. HICKMAN,
Commissioner of the U. S. Circuit Court in and for the Districts of Mo.

And on said first day of December, in said last-mentioned year, there was also filed in the clerk's office of said district court, by Daniel Wolf, claimant of 93 bales of said cotton, his exceptions to the libel of information in this cause, which exceptions are in the words and figures following, to wit:

Exceptions of claimant Wolf to libel.

THE UNITED STATES
vs.
269½ BALES OF COTTON. } Libel of information, No. 939, 1862.

In the district court of the United States, in and for the eastern district of Missouri.

11

To the Honorable Samuel Treat, judge of said dist. court:

Daniel Wolf, claimant herein of 93 bales marked D. W. and other marks of said 269½ bales cotton, now comes and excepts to said several propositions of said libel, on the following grounds and for the following causes, to wit:

1st. To the fourth proposition of said libel, because it does not name the persons from whom it alleges said cotton was bought or acquired, nor how or in what manner said cotton was used or meant or intended to be employed in aid of said insurrection, nor the persons to whom said cotton is supposed to have belonged at any time, and that said charge is double, that said cotton was "bought and sold" by certain persons, &c.

2nd. To the 5th proposition said Wolf objects that the part of the State of Mississippi in which said cotton is alleged to have been originally taken is not given; that it is not stated by whom it is taken, nor when or by whom or what authority it is supposed to have been brought into the State of Arkansas; that it is not alleged that said supposed persons, styling themselves agents of said Confederate States, so called, were such agents, or that said cotton at any time belonged to said so-called Confederate States, or to whom it did at any time belong, or that it was used by said Confederate States, or was meant to be used by them in aid of said insurrection, and that said proposition does not state supposed facts sufficient to confer upon this court jurisdiction of the said cause of libel and complaint.

3d. Said Wolf objects to the 6th proposition, that it does not allege that said cotton was the property of the persons as whose property it is alleged to have been seized, or that it belonged to any one in arms against the United States, or countenancing, or aiding said insurrection; that it does not show by whose direction or authority said cotton was seized, or by whom
12 or by whose authority or when it was brought to Memphis, or who caused it to be put on board of boats and transported to Helena, in the State of Arkansas, or that there was anything unlawful in such transportation, and that said proposition does not contain facts sufficient to give this court jurisdiction of said cause, or constituting any grounds for forfeiting or confiscating said cotton to or by the United States.

4th. And said Wolf demurs and excepts to said libel in whole and collectively, because it does not contain a statement of facts sufficient to confer jurisdiction of said cause on this court, and because it does not contain allegations upon which, if true, said cotton would be liable to forfeiture or confiscation under any law of the United States or of the nations, and because said libel is confused and self-contradictory, informal, and insufficient.

(Signed) D. WOLF, *Claimant,*
By R. S. HART, *his proctor.*

And on said first day of December, in the year last aforesaid, the marshal of said United States in and for said district returned into court the warrant of detention and monition heretofore issued in this cause, together with his return of his proceedings thereon, and said warrant with said return, were thereupon, on said last-named day, filed in the clerk's office of said district court, and said return on said warrant is in the words and figures following, to wit:

Marshal's return on warrant of detention.

United States of America, *Eastern District of Missouri, ss:*

I return on the within warrant that I have duly executed the same at St. Louis, October 18th, 1862, by detaining in my possession for safe custody 268 bales and two half bales of cotton, (marked C. S. A. and other marks,) heretofore arrested by me, (the particulars of which marks will more fully appear by Exhibit "A" annexed to warrant of arrest, in case No. 934, and made part of return in that case,) and by detaining the same sub-
13 ject to the further order of the said district court; also by reading the within warrant to R. J. Howard, the person in charge of said property when so arrested by me as aforesaid; also by publishing the annexed proclamation in the Missouri Republican, a newspaper published in the city of St. Louis, on the following named days, to wit, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 days of October, and 1st, 2d, 3d, and 4th days of November, 1862; also by posting up a copy of the annexed proclamation, in the most public manner for the space of 14 days, at or near the place of trial, to wit, in the St. Louis post office, in the city of St. Louis, Mo.

(Signed) D. A. RAWLINGS, *Marshal,*
By GEORGE KYLER, *Dept.*

St. Louis, November 17, 1862.

Copy of notice in admiralty annexed to return.

And annexed to said return of said marshal was a printed copy of a proclamation in admiralty, which copy is in the words and figures following, to wit:

United States of America, *Eastern District of Missouri, ss:*

United States marshal's proclamation.

In the district court of said United States in and for said district.

In case No. 939 of the United States, libellant, against two hundred and sixty-nine and one half bales of cotton, (marked C. S. A. and other marks,) I, D. A. Rawlings, United States marshal for the eastern district of Missouri, do hereby give public notice that a libel has been filed against said cotton in a cause of seizure and forfeiture, under acts of Congress of 6th August, 1861, and 17th July, 1862, and that a warrant of detention has been issued against said cotton, and that I do now detain two hundred and sixty-eight bales and two half bales of cotton, (marked C. S. A. and other marks,) and I hereby also give public notice that the time assigned for the return of said warrant and the hearing of this cause is the first Monday, the first day of December, A. D. 1862. And I hereby admonish and summon all
14 persons claiming any interest in said two hundred and sixty-eight bales and two half bales of cotton, &c., or knowing or having anything to say why the same should not be decreed to be forfeited to the United States, and be condemned and sold to answer the prayer of said libellant, that they be and appear before said district court, at its rooms in the city of St. Louis, in said district, on said first day of December, 1862, at 10 o'clock a. m., when and where said cause will be heard, then and there to interpose their claims and answer said libel, and make their allegations in that behalf.

(Signed) D. A. RAWLINGS,
U. S. Marshal for the Eastern District of Missouri.

St. Louis, October 22, 1862.

And at a regular stated term of said district court, begun and holden at the city of St. Louis, in said district, on Monday, the 17th day of November, A. D. eighteen hundred and sixty-two, the following further proceedings took place in this cause, on Monday, the first day of December, in said last-mentioned year, to wit.

Further time to R. M. Henning et al. to file claim, &c.

On motion of James O. Broadhead, esquire, appearing as proctor for Robert M. Henning, Marcus P. Woodruff, and Albert Pearce, claimants of said cotton, and the district attorney consenting thereto, three days' further time was given them to file a claim and answer in this cause.

Further time to claimants to file answers, &c.

On motion of John R. Shepley, esquire, proctor for Wm. M. McPherson, claimant of 147 bales of said cotton, and the district attorney consenting thereto, the court ordered that said claimant have three days' further time within which to file an answer in this cause.

On motion of Asa S. Jones, esquire, appearing as proctor for Alfred Spink,
claimant of 176½ bales of said cotton, and the district attorney
15 thereto consenting, the court ordered that said claimant have three
days' further time within which to file his claim and answer in this
cause.

Orders of proclamation and defaults.

The marshal of said United States in and for said district having returned upon the warrant of detention and monition heretofore issued in this cause that he had detained two hundred and sixty-nine and a half bales of cotton under said warrant, and had given due notice according to law and the rules and practice of this court, thereupon, on motion of the district attorney, the court ordered that proclamation be made to all persons having anything to say why the said two hundred and sixty-nine and a half bales of cotton should not be decreed to be forfeited to the United States, and condemned to answer the prayer of the libel of information in this cause, that they appear and make their allegations in that behalf, which proclamation was thereupon accordingly made. And on like motion, the court ordered that the defaults of all persons who have not already filed their claims or answers in this cause, or obtained further time within which to file the same, be entered of record, which is here accordingly done. The court further ordered that the hearing of this cause be continued until the further order of the court herein.

Claim of Alfred Spink to 176½ bales.

And on the fourth day of December, in said last-mentioned year, there was filed in the clerk's office of said district court, by Alfred Spink, a claim to 176½ bales of said cotton, which claim is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Eastern District of Missouri, ss:*

In the district court of said United States, in and for said district, in case
No. 939, A. D. 1862, of the United States, libellant, against 269½ bales
16 of cotton, in admiralty.

To the Honorable Samuel Treat, judge of said district court:

The claim of Alfred Spink, for one hundred and seventy-six and one half bales of cotton, alleged in said libel to be marked C. S. A. and other marks, made in the above-entitled cause, alleges as follows:

First. That the said claimant is the true and bona fide owner of one hundred and seventy-six and one half bales of cotton, and that no other person is the owner thereof.

Second. That said owner resides in the city of Chicago and State of Illinois.

Third. That said one hundred and seventy-six and one half bales of cotton claimed and owned by this claimant are especially identified by the mark upon each bale of the letters J. O. Y., there being, however, other marks upon part of said cotton.

(Signed) ASA S. JONES, *Proctor for claimant.*

UNITED STATES OF AMERICA, *Eastern District of Missouri, ss:*

Asa S. Jones, proctor for said claimant, who is absent from said district, being duly sworn, deposes and says that to the best of his knowledge and belief, the allegations in the foregoing claim are true, and that he has put in the above claim as the duly authorized agent of said claimant in this behalf of the owner of said 176½ bales of cotton above described; that affiant's means of knowledge as to the correctness of above claim is the bill of sale to the vendor, and also conversations and informations had and derived from said Alfred Spink.

(Signed) ASA S. JONES.

Subscribed and sworn by the above-named affiant, this fourth day of December, 1862, before me, at office in the city of St. Louis, in said eastern district of Missouri.

(Signed) F. A. WERNER,
Commissioner of the U. S. circuit court
in and for the Districts of Missouri.

17 *Further time to claimant Spink to file answer.*

And at said regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this cause, on Thursday, the fourth day of said month of December, in said last-mentioned year, to wit:

On motion of Asa S. Jones, esquire, proctor for Alfred Spink, claimant of 176½ bales of said cotton, and the district attorney consenting thereto, the court ordered that said claimant have further time until the twenty-fourth day of this month of December to file an answer in this cause.

Hearing on exceptions of claimant Wolf.

And at said regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Saturday, the sixth day of December, in said last-mentioned year, to wit:

This day come the United States, by district attorney, and Daniel Wolf, claimant of 93 bales of said cotton, also came, by Ralf S. Hart, esquire, his proctor, and on motion of said proctor for said claimant, the court ordered that the exceptions of said Wolf, heretofore filed, to the libel of information herein, be now heard.

The libel was read, and also said exceptions thereto.

Ralph S. Hart, esquire, thereupon argued for said claimant, and Charles S. Hayden, esquire, acting for district attorney, for said United States. And the arguments herein not being concluded, the court ordered that further arguments on said exceptions be continued until the further order of the court herein.

Leave to claim't McPherson to file answer.

And at said regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause 18 on Monday, the eighth day of said month of December, in said last-named year, to wit:

On motion of John R. Shepley, esquire, proctor for William M. McPherson, claimant of 147 bales of said cotton, and the district attorney consenting thereto, the court ordered that said claimant have leave forthwith to file his claim and answer in this cause.

Claim and answer of W. M. McPherson.

And said claim and answer of said claimant McPherson were thereupon filed on said last-mentioned day in the clerk's office of this district court, and are in the words and figures following, to wit:

In the district court of the United States for the eastern district of Missouri, No. 939.

THE UNITED STATES
vs.
269½ BALES OF COTTON.

To the Honorable Samuel Treat, judge of the district court for the eastern district of Missouri:

The claim and answer of Wm. M. McPherson, intervening for his interest in one hundred and forty-seven bales of the cotton mentioned in the libel in said cause of William W. Edwards, attorney of the United States for the eastern district of Missouri, alleges as follows:

First. That he is the true and bona fide owner of the 147 bales of said cotton so claimed by him, and that no other person is the owner thereof.

Second. That as to the matters and things in said fourth article of said libel contained, they are not, nor are any of them, true so far as the said bales of cotton owned and claimed by this respondent are concerned.

Third. That so far as the said bales of cotton so as above claimed by respondent are concerned, and as to them, he denies that they were originally taken, procured, or obtained from any persons engaged in armed rebellion against the United States, or in aiding or abetting the same, or that any such persons had possession of the same, or that it was taken from 19 such persons, as alleged, or that it was ever held or possessed by any persons styling themselves agents of the Confederate States of America; that it was not held by insurrectionists, nor held nor used to countenance or abet said rebellion.

Fourth. That as to the matters alleged in the sixth article of said libel, the said respondent, as to the bales of said cotton above owned and claimed by him, says that he denies that said property was taken, procured, or obtained at any time as the property then and there aiding and abetting said rebellion, or that as such property it was brought to the Mississippi River in any way, or as such conveyed to Helena, or as such held by agents of the United States.

Fifth. That he denies that the bales of cotton owned and claimed by him as aforesaid are forfeited or confiscated to the United States, or that this court has jurisdiction thereof, or that the same are within the jurisdiction of this court.

(Signed) WM. M. McPHERSON.

Sworn to by said affiant this 5th of Dec'r, 1862, before me, at office in St. Louis, Mo.

(Signed) F. A. WERNER,
Com'r U. S. Circuit Court, Dist's of Missouri.

(Signed) Wm. M. McPherson, *pro, &c.*
Glover & Shepley, *Proctors.*

Further hearing on exceptions.

And at said regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Monday, the fifteenth day of December, in the year last mentioned, to wit:

This day come the United States, by district attorney, and also William M. McPherson, claimant of 147 bales of said cotton, by John R. Shepley, esquire, his proctor, and the hearing of the exceptions heretofore filed herein having been resumed, said John R. Shepley, esquire, argued for said claimant McPherson, and the arguments herein not being concluded, the
20 court ordered that further arguments be continued until to-morrow morning.

Further hearing on exceptions.

And at said regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Tuesday, the sixteenth day of December, in said last-mentioned year, to wit:

This day come again the parties, by their respective proctors, and the hearing of the exceptions herein having been resumed, Asa S. Jones, esquire, argued for Alfred Spink, claimant of 176½ bales of said cotton, and Ralph S. Hart, esquire, for claimant Daniel Wolf; and the arguments of said exceptions not being concluded, the court ordered that the further arguments thereof be continued until the further order of the court herein.

Further hearing on exceptions.

And at said regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Monday, the 29th day of December in said last-mentioned year, to wit:

This day came again the parties, by their respective proctors, and the hearing of the exceptions to the libel of information in this case having been resumed, Charles S. Hayden, esquire, acting for district attorney, argued for the United States, but not having concluded, the court ordered that further argument herein be continued until to-morrow morning.

Further hearing on exceptions.

And at said regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Tuesday, the thirtieth day of December, in said last-mentioned year, to wit:

This day come again the parties, by their respective proctors, and the hearing of the exceptions herein having been resumed, Charles S. Hayden, esquire, acting for district attorney, concluded his arguments for
21 said United States, and the court ordered that the further hearing of arguments herein be continued until to-morrow morning.

Arguments closed and exceptions submitted.

And at said regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause on

Wednesday, the thirty-first day of December, in said last-mentioned year, to wit:

This day come again the parties, by their proctors, and the hearing on the exceptions in this cause having been resumed, John R. Shepley, esquire, argued for William M. McPherson, claimant of 147 bales of said cotton; and the arguments herein having been concluded, said exceptions were thereupon submitted to the court, which, not being fully advised of and concerning the same, took time to consider of its judgment herein.

Decree overruling 1st, 2d, and 4th exceptions and sustaining 3d exception.

And at said regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Monday, the 12th day of January, in the year of our Lord eighteen hundred and sixty three, to wit:

This day came again the United States, by district attorney, and also the claimants herein, by their respective proctors, and the court, on consideration of the exceptions to the libel of information in this cause heretofore filed by Daniel Wolf, claimant of 93 bales of said cotton, and being fully advised of and concerning the same, did order that the first, second, and fourth exceptions of said claimant be, and the same are hereby, overruled, and that the third exception of said claimant be, and the same is hereby, sustained.

Answer of Daniel Wolf.

And on the sixteenth day of January, in the year last aforesaid, there was filed in the clerk's office of this district court the answer of claimant Daniel Wolf, which answer is in the words and figures following, to wit:

22 United States dist. court, E. dist. of Mo.

United States
vs.
269½ Bales Cotton, Dan'l Wolf, claimant of 93 bales of said cotton, McPherson, Spink, *et als.*, claimants of portions of said cotton.

The answer of Dan'l Wolf to the libel in said cause, intervening, &c., alleges as follows:

1st. The said Wolf is the bona fide owner of 93 bales of said cotton, and no other person is the owner thereof.

2nd. To the matters and things in the fourth and sixth articles of said libel, this respondent denies that any of the allegations therein contained are true, and denies that said cotton claimed by him was bought, sold, given, or used in aiding, abetting, or encouraging, or with intent to aid, abet, or encourage said insurrection, or any resistance to the laws or authority of the said government of the United States. He denies that it was bought, obtained, or procured from persons in armed rebellion against said government, or from persons aiding and abetting the same, and avers that it was lawfully obtained from persons loyal to the government of the United States, and was lawfully obtained by this claimant.

Lastly. This claimant denies that by reason of anything in said libel contained said cotton is forfeited and confiscated to the said United States. Wherefore he prays that the same may be restored to him.

(Signed) GEO. P. STRONG, *Proctor of Daniel Wolf.*

Affidavit waived.

(Signed) C. S. HAYDEN, *As't Dist. Att'y.*

Leave to file pleas in abatement.

And at said regular stated term hereinbefore mentioned, begun and holden as aforesaid, the following further proceedings took place in this cause on Monday, the nineteenth day of January, in said last-mentioned year, to wit:

23 This day came the United States, by district attorney, and on motion of said attorney, the court ordered that he have leave to file, forthwith, pleas in abatement to the claims of Wm. M. McPherson, Alfred Spink, and Daniel Wolf, heretofore filed in this cause.

Pleas in abatement to claim of McPherson.

And thereupon and on said nineteenth day of January, in said last-mentioned year, the said district attorney filed in the clerk's office of this district court pleas in abatement to the claims of William M. McPherson, Alfred Spink, and Daniel Wolf in this cause; and the plea in abatement to the claim of Wm. M. McPherson is in the words and figures following, to wit:

In the district court of the United States, E. district of Missouri.

UNITED STATES OF AMERICA
vs.
269½ BALES OF COTTON.
} No. 939.

Now comes the United States, by district attorney, and by leave of court files the plea of abatement to the claim of Wm. M. McPherson, and says that it is not true that said so-called claimant is the true and bona fide owner of said 147 bales of said cotton, nor was he at the time of the making of said claim, nor has he ever been, the owner of or had any right to or interest in any of said cotton; and this plaintiff is ready to verify. Wherefore plaintiff asks judgment, &c.

(Signed) W. W. EDWARDS, *U. S. Dist. Att'y.*

Pleas in abatement to claim of Spink.

And the plea in abatement to the claim of Alfred Spink is in the words and figures following, to wit:

In the district court of the United States for the eastern district of Missouri.

UNITED STATES OF AMERICA
vs.
269½ BALES OF COTTON.
} No. 939.

Now comes the United States, by the district attorney, and by leave of court files his plea in abatement to the claim of Alfred Spink to 176½ bales of said cotton, and says it is not true that said so-called claimant Alfred Spink is the true and bona fide owner of 176½ bales of said cotton, or of any part thereof, or that he was such owner at the time of making said claim; that said Spink has not, nor has he ever had, any right to or title in any part of said cotton or the proceeds thereof; and this he is ready to verify. Wherefore plaintiff asks judgment, &c. 24

(Signed) W. W. EDWARDS, *U. S. Dist. Att'y.*

Pleas in abatement to claim of Dan'l Wolf.

And the plea in abatement to the claim of Daniel Wolf is in the words and figures following, to wit:

In the district court of the U. States for the eastern district of Missouri.

United States of America }
vs. } No. 939.
269½ Bales of Cotton. }

Now comes the United States, by the district attorney, and files its plea in abatement to the claim of Daniel Wolf to 147 bales of said cotton, and says that said so-called claimant is not the true and bona fide owner of said 93 bales of said cotton, or of any part thereof, nor was he at the time of the making of said claim, nor has he ever been, the owner of any part of said cotton or of the proceeds thereof; and this the plaintiff is ready to verify. Wherefore it asks judgment.

(Signed) W. W. EDWARDS, *U. S. Dist. Att'y.*

Further time to Spink to answer.

And at said regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause, on said Monday, the nineteenth day of January, in the year last aforesaid, to wit:

On motion of Asa S. Jones, esquire, proctor for claimant Alfred Spink, and the district attorney consenting thereto, the court ordered that said claimant have further time until the first day of February next to file his answer in this cause.

Leave to amend libel.

25 On motion of the district attorney the court ordered that he have leave to amend his libel of information in this cause.

Petition of James Francis to be admitted as informer.

And on the twenty-second day of January, in said last-mentioned year, there was filed in the clerk's office of this district court, by James Francis, his petition as informer in this cause; which petition is in the words and figures following, to wit:

United States of America, *Eastern District of Missouri, ss:*

To the Hon. Samuel Treat, judge of the district court within and for said district:

The petition of James Francis, of the city of St. Louis and State of Missouri, respectfully showeth that at the times hereinafter mentioned he was, and still is, the informer against the two hundred and sixty-nine and half bales of cotton described in the libel in case No. 939 in this honorable court; that on or about the 2d day of October, 1862, he gave information to the board of trade at Memphis, and also sent a written statement to R. J. Howard, collector of the port of St. Louis, containing information upon which said cotton was seized by said collector and subsequently libelled in case No. 934 in this honorable court; that on or about the 10th day of October, 1862, petitioner delivered another statement to said collector giving detailed information in reference to said cotton, and of its liability to seizure and forfeiture to the U. S.; and also on said last-mentioned day petitioner filed an information in writing with the district attorney of the U. S. within and for said district, upon which information said cotton was subsequently libelled in said case No. 939; that said cotton has been sold pendente lite, and the proceeds of the sales thereof are now in the registry on the instance side of this honorable court; that said case No. 939 has not as yet come to a final hearing in this honourable court. Wherefore petitioner prays that he 26 may be admitted to appear in said case No. 939 as a party to the record as such informer, and that he may have such other and further relief in the premises as he may be entitled to receive.

(Signed) J. K. KNIGHT, *Proctor for Petitioner.*

James Francis, being sworn, says the matters and things as set forth in the foregoing petition are true according to the best of his knowledge and belief.

(Signed) JAMES FRANCIS.

Subscribed and sworn to before me this 22 day of January, 1863.

(Signed) BEN. F. HICKMAN, *U. S Com'r, Mo. Dis.*

Motion to strike petition of James Francis from files.

And at said regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Monday, the 21st day of January, 1863, to wit

This day came the United States, by dist ttorney, who moved the court to strike from the files of this court the p on of Jas. Francis as informer in this cause heretofore filed herein. Said motion was thereupon argued by said district attorney on behalf of the United States, and by James K. Knight, esquire, proctor for said petitioner; and said arguments being concluded said motion was thereupon submitted to the court, which, not being fully advised of and concerning the same, took time to consider of its judgment herein.

Motion to strike from files overruled.

And at said regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause, on Wednesday, the twenty-eighth day of January, in said last-mentioned year, to wit:

This day came again the United States, by district attorney, and also James Francis, who has heretofore filed his petition as informer in this cause, by James K. Knight, esquire, his proctor, and the court, on consideration of the motion made by said district attorney to strike said petition of 27 said Francis from the files of this court, and being fully advised of and concerning the same, ordered that said motion be, and the same is hereby, overruled.

Hearing on petition of James Francis to be admitted as informer.

And at said regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause, on Monday, the second day of February, in said last-mentioned year, to wit:

This day came the United States, by district attorney, and also James Francis, petitioner to be admitted as informer in this cause, by James K. Knight, esquire, his proctor, and also Richard J. Howard, surveyor and acting collector of the port of St. Louis, resisting said petition, by Asa S. Jones, esquire, his proctor, and on motion of said proctor for said petitioner, the court ordered that the petition of said James Francis be now heard.

The said petition was read.

On like motion, and by consent, the court ordered that the 57th rule of this court, requiring that all proofs taken in this court in admiralty causes shall be by deposition or commission, suspended in this cause, and that the parties herein have leave to introduce oral testimony.

Charles S. Hayden was thereupon sworn and examined as a witness for said petitioner.

The court thereon ordered that the further hearing of said petition be continued until to-morrow morning.

Further hearing on petition of Jas. Francis.

And at said regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause, on Tuesday, the third day of February, in said last-mentioned year, to wit:

This day came again the United States, by district attorney, also the petitioner James Francis, and also Richard J. Howard, surveyor of the port of St. Louis, by their respective proctors, and the hearing on the petition of said James Francis having been resumed, Charles S. Hayden was further examined as a witness for said petitioner.

28 Thereupon Henry Firrell and Richard J. Howard were sworn and examined as witnesses for said petitioner; and the examination of said witnesses for said petitioner being concluded, William M. McPherson was sworn and examined on behalf of the United States.

The deposition of George W. Baker taken in this cause was thereupon read on behalf of said United States.

The evidence being concluded, Charles S. Hayden, esquire, for district attorney, argued for said United States, and James K. Knight, esquire, for said petitioner.

The petition was thereupon submitted to the court, which, on consideration thereof, and of the proofs herein, did adjudge and decree that the petition of said petitioner James Francis herein be, and the same is hereby, dismissed at his costs to be taxed.

Leave to claimant Spink to file exceptions.

And at said regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause, on Wednesday, the fourth day of February, in said last-mentioned year, to wit:

On motion of Asa S. Jones, esquire, proctor for claimant Alfred Spink, and no objection being made thereto by the district attorney, the court ordered that said claimant have leave forthwith to file his exceptions to the libel of information in this cause.

Exceptions to libel by claimant A. Spink.

And said exceptions of said claimant Alfred Spink were thereupon, on said last-mentioned day, filed in said district court, and are in the words and figures following, to wit:

United States dis. court, eastern district of Mo.

THE UNITED STATES
vs.
269½ BALES OF COTTON, ALFRED SPINK, CLAIMANT OF
176½ bales.

This claimant, by his proctor, by leave of court, files this his exceptions to the libel in said cause—the fourth and sixth sections:

29 1st. That the allegations are not sufficient in law to sustain the right of forfeiture and confiscation of said cotton to the U. S., in this, that it is nowhere alleged in said libel that the President of the United States

has issued his proclamation declaring that the laws of the United States are opposed, &c., as provided in the act of Congress entitled "An act to confiscate property, &c.," approved Aug. 6, 1861, under and by virtue of said act, or subsequent to the passage thereof, the same, such proclamation, being necessary to make the law operative and in force.

(Signed) ASA. S. JONES, *Proctor for Spink.*

2nd. It is not alleged that the President caused the property in said act mentioned to be seized, confiscated, and condemned as required by the first section of said act.

(Signed) ASA S. JONES, *Proctor.*

Exceptions of A. Spink overruled.

And at said regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause, on Wenesday, the fourth day of said month of February, in the year last mentioned, to wit:

And said exceptions of said claimant Alfred Spink having been filed, they were thereupon submitted to the court, which, on consideration thereof, and being fully advised of and concerning the same, ordered that said exceptions be, and the same are hereby, overruled.

Leave to claimant Spink to file answer.

On the further motion of Asa S. Jones, esquire, proctor for claimant Alfred Spink, and the district attorney consenting thereto, the court ordered that said claimant have leave to file forthwith his answer to the libel in this cause.

And said answer of said claimant Alfred Spink was thereupon, on said last-mentioned day, filed in the clerk's office of this district court, and is in the words and figures following, to wit:

30 *Answer of Alfred Spink.*

United States dis. court, east. district of Mo.

THE UNITED STATES
vs.
269½ BALES OF COTTON, ALFRED SPINK, CLAIMANT OF 176½ bales.

The answer of said Spink to the libel in said cause, claiming, &c., alleges as follows:

1st. That he is the owner of said 176½ bales of said cotton, bona fide, and that no other person is the owner thereof.

2nd. This claimant denies each and every allegation in said libel set out and contained in the sixth and fourth section of the same generally, and specifically, and denies that any person or persons whatsoever, on the 1st day of September, 1862, or at any other time, said cotton claimed or any part thereof purchased or acquired, sold, and gave with intent to use and employ the same and suffer the same to be used and employed, in aiding and abetting and promoting the said insurrection or any insurrection and resistance to the laws, and in aiding and abetting certain persons engaged therein; and denies that any person or persons owning said cotton did knowingly use and employ or consent to the use and employment of the same as aforesaid, at any time or at any place, as alleged in said libel, and in said fourth and sixth sections thereof.

3d. That this claimant bought said cotton at the port of Memphis, State of Tenn., as he had a legal right to do, of a loyal citizen of the United States, on or about the 3d of Oct., 1862.

4th. This claimant denies that by reason of the allegation in said libel, said cotton is confiscated to the United States as alleged in said libel, and particularly does this claimant deny that the United States, has any right to claim said cotton as forfeited and confiscated by reason of and in virtue of the act of Congress entitled "An act to confiscate property used for insurrectionary purposes," approved August 6, 1861; that the President of
31 the United States did not nor has he ever issued his proclamation under and by virtue of said law and as therein provided, as was and is necessary before the said law shall become operative and of force.

Wherefore this claimant prays that said libel be dismissed and said cotton released to him

(Signed) ASA S. JONES, *Proctor for Spink.*

United States of America, *Eastern District of Missouri, ss:*

Alfred J. Hopper, being duly sworn, deposes and says that to the best of his knowledge and belief the allegations in the foregoing answer are true; that he is the duly authorized agent in this behalf of said claimant Spink, who is not now within said eastern district of Missouri; that affiant's means of knowledge is that he has aided said claimant in investigating this cause, and that he has personal cognizance of the matters alleged in said answer.

(Signed) A. J. HOPPER.

Subscribed and sworn to by said affiant Hopper before me, at office, in the city of St. Louis, in said district, this 3d day of February, A. D. 1863.

(Signed) F. A. WERNER,
Com'r, U. S. Circuit Court, Districts of Mo.

Leave to withdraw pleas in abatement.

And at a regular stated term of this district court, begun and holden in the city of St. Louis, in said district, on Monday, the sixteenth day of February, A. D. eighteen hundred and sixty-three, the following further proceedings took place in this cause on Tuesday, the seventeenth day of February, in said last-mentioned year, to wit:

On motion of the district attorney the court ordered that he have leave to withdraw the pleas in abatement to the claims of William M. McPherson, Alfred Spink, and Daniel Wolf, heretofore filed herein.

And at a regular stated term of this district court, begun and holden in the city of St. Louis, in said district, on Monday, the eighteenth day
32 of May, in the year of our Lord eighteen hundred and sixty-three, the following further proceedings took place in this cause, on said last-mentioned day, to wit:

Order to summon petit jurors.

On motion of the district attorney, the court ordered that the marshal of said United States for this district summon eighteen petit jurors to be and appear before this court on Monday next, the twenty-fifth day of this month of May, out of which number to select a pannel to try the issues in this cause, and that this cause be set down for hearing on said Monday, the said twenty-fifth day of May next.

Hearing of cause.

And at said last-mentioned regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Monday, the twenty-fifth day of May, in said last-mentioned year, to wit:

This day came the United States, by district attorney, and the claimants herein, by their respective proctors, also came, and this cause having been set down for hearing on this day, and all the parties herein being ready for trial, on motion of the district attorney, the court ordered that the jury come, and thereupon came said jury, to wit: John J. Hoppee, James Richardson, Samuel McCartney, John Ferree, B. W. Meade, M. S. Mepham, Charles W. Irwin, Alexander Finley, Joseph Gray, George W. Manning, Horatio Wood, and H. H. Sleeth; twelve good and lawful men, who were sworn well and truly to try the issue joined herein, and this cause was in part heard, but not being concluded at the hour of adjournment, the court ordered that further hearing be continued until to-morrow morning.

Further hearing of cause.

And at said last-mentioned regular stated term of this district court, begun and holden as aforesaid, the following further proceedings 33 took place in this cause on Tuesday, the twenty-sixth day of May, in said last-mentioned year, to wit:

This day came again the parties, by their respective proctors, and the jury sworn herein being present, this cause was further heard, but not being concluded at the hour of adjournment, the court ordered that the further hearing of said cause be continued until to-morrow morning.

Further hearing of cause.

And at said last-mentioned regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Wednesday, the twenty-seventh day of May, in said last-mentioned year, to wit:

This day came again the parties, by their respective proctors, and the jury sworn herein being present, this cause was further heard, and the hearing herein being concluded said cause, was thereupon submitted, and the jury sworn herein, after having retired to consider of their verdict herein, afterwards returned into court the following verdict, to wit:

Verdict of jury.

U. S. district court.

United States of America }
vs. } No. 939.
269½ Bales of Cotton. }

We, the jury, find that the allegations in the libel are true, and find for the United States.

H. WOOD, *Foreman.*

Motion to set aside verdict and grant new trial.

And on the first day of June, in said last mentioned year, there was filed in the clerk's office of said court, by the claimants herein, a motion to set aside verdict and grant a new trial in this cause; which motion is in the words and figures following, to wit:

In the district court of the United States for the eastern district of Missouri.

The United States }
vs. }
269½ Bales of Cotton. }

And now come the said claimants and move the court to set aside 34 the verdict and judgment in the above cause, and grant a new trial, for the following reasons, to wit:

First. Because the court admitted illegal and improper evidence offered on the part of the United States.

Second. Because the court rejected proper and legal evidence offered on the part of claimants and each of them.

Third. Because the court refused to give to the jury proper legal instruction offered on the part of claimants and each of them.

Fourth. Because the court gave to the jury instructions and directions which were not law, and misdirected the jury as to matters at law.

Fifth. Because the verdict was against the law, against the evidence, and against the weight of evidence.

(Signed) GLOVER & SHEPLEY,
Proctors for Wm. M. McPherson.
(Signed) R. S. HART, *Proctor for Wolf.*
(Signed) ASA S. JONES, *Proctor for Spink.*

Presentation and hearing of motion to set aside verdict, &c.

And at said last-mentioned regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Wednesday, the third day of June, in said last-mentioned year, to wit.

This day came the United States, by district attorney, and also Daniel Wolf, claimant, by R. S. Hart, esquire, his proctor, and said proctor for said claimant presented to the court the motion in writing heretofore filed herein to set aside the verdict and to grant a new trial in this cause, which motion was argued by said proctor for said claimant, and thereupon submitted to the court, which not being fully advised of and concerning the same, took time to consider of its judgment herein.

Motion in arrest of judgment.

And on the fourth day of June, in said last-mentioned year, said claimants herein filed in the clerk's office of said district court a motion in arrest of judgment in this cause, which motion is in the words and figures following, to wit:

35 THE UNITED STATES
vs.
269½ BALES OF COTTON.

And now come the said claimants McPherson, Spink, and Wolf, and move the court in arrest of judgment in said cause—

I. Because said libel does not show how said cotton was meant to be used in aid of said insurrection or in aid of any one aiding the same, or how it was used in aid of said rebellion or of any one aiding the same, or that it was so used or meant to be so used.

II. Because the said libel does not show a state facts sufficient to institute a cause of action against the said cotton, under said act of August 6th, 1861, or facts sufficient upon which to adjudge said cotton or any part thereof confiscated under said statute.

III. Because said libel is informal and contradictory and wholly insufficient in law to support a judgment confiscating said cotton under said .

(Signed) By HART, SHEPLEY & JONES,
Proctors for above Claimants.

Motion to set aside verdict, &c., overruled.

And at said last-mentioned regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Friday, the fifth day of June, in said last-mentioned year, to wit:

This day came again the United States, by district attorney, and also came the claimants herein, by their respective proctors, and the court, on consideration of the motion, in writing, to set aside the verdict and to grant a new trial of this cause, and also of the motion in arrest of judgment heretofore filed in this cause, and being fully advised of and concerning the same, did order that said motions be, and the same are hereby, overruled.

Judgment in accordance with verdict.

36 And thereupon, on motion of the district attorney, and in accordance with the verdict of the jury rendered herein, the court ordered, adjudged, and decreed that said two hundred and sixty-eight bales and two half bales of cotton are forfeited to the said United States in manner and form as alleged in the libel in this cause, and that said cotton be condemned to the use of said United States in pursuance of the prayer of said libel.

Condemnation of proceeds.

And said two hundred and sixty-eight bales and two half bales of cotton having been sold under the venditioni exponas issued out of this court in cause No. 934, against said cotton, and the proceeds of such sale are now in the registry of this court to the credit of said cause No. 934, and the same having been retained in the said registry in said cause No. 934, subject to the final orders in this cause, the court adjudged and decreed that said proceeds of said sale be condemned to the use of said United States.

Orders of payment of costs, &c.—Order of payment to dist. att'y of balance of fund.

On motion of the district attorney, the court ordered that all costs and expenses of prosecution in this cause, and also all costs and expenses of prosecution in said cause No. 934, taxable against the fund proceeding from said sale, be paid by check out of said registry to the officers of this court, and that the residue of said fund, not otherwise disposed of, be paid by check to the district attorney for the sole use of the United States, it appearing to the court that there was no informer in this cause.

Bill of exceptions.

And on the ninth day of June, in said last-mentioned year, the claimants herein and the petitioner James Francis filed in the clerk's office of said district court their bill of exceptions in this cause; which bill of exceptions is in the words and figures following, to wit:

37 U. S. dist. court, eastern dist. Mo., May term, A. D. 1863.

THE UNITED STATES
vs.
269½ BALES OF COTTON.
} Libel, 939, A. D. 1862.

Be it remembered, that on the trial of the above cause the United States, to maintain the issue on its part, offered to read to the jury the deposition of William Sands, the same being on file in said cause and in words and figures following, to wit: Whereupon the claimants McPherson, Spink, and Wolf objected to the reading of the following portion of said deposition as hearsay, to wit: That portion wherein said Sands (referring to a certain so-called Confederate lieutenant said to have been captured by the military force referred to by said Sands in said deposition) says: "He said, in my hearing, that his father was the agent of the Confederate government for the cotton; that the cotton had been collected for the planters for the benefit of the Confederate government." But the court overruled said objection and allowed said portion of said deposition to be read in evidence to the jury on behalf of the United States; to which ruling of the court and reading of said portion of said deposition the said claimants at the time excepted, tendering their bill of exceptions and praying that the same be signed and sealed, and the matters thereof preserved of record.

The following depositions were also then read on the part of the libellant, (by consent, original deposition of Canfield sent up,) and libellant rested. And then the following depositions were read on the part of the different claimants, as follows, (by consent, original depositions of Boyd, Gibson, Conley, Fawcette, Spink, Helsey, and Hesse sent up,) and they rested. And in rebuttal the libellant read the following depositions, (by consent, original depositions of Boffinger and O'Reilly sent up.) It was admitted that there was a prior libel No. 934 against the same cotton, under of July 13, 1861, still pending in this court. This was all the evidence in the
38 case.

And be it also remembered, that afterwards, on the trial of said cause, said claimants having offered testimony tending to establish that they had acquired the portions of said cotton by them respectively claimed in open market by fair purchase and in good faith towards the government of the United States in respect of its claims against the same, and that the military authorities of the United States had abandoned the supposed military seizure of said cotton referred to in the aforesaid deposition of said Sands at Helena, in the State of Arkansas, in favor of the said William L. Grant referred to in said deposition, and had again seized said cotton by military authority at Memphis, in the State of Tennessee, and had again there abandoned said seizure by the same military authorities at Memphis, and again seized said cotton at Memphis by the same military authorities there, and that Spink & Wolf acquired their title to said cotton from said Grant, at Memphis, between the times of the last-mentioned abandonment and seizure of the same in open market, by fair purchase, for value, in good faith towards the United States government in respect of its claims against said cotton; and the testimony on both sides being closed, the claimants requested the court to instruct the jury as follows, to wit: "The government is not entitled to a verdict against any portion of the cotton, which is proven to have passed before its seizure for condemnation here at St. Louis, by fair sale and purchase, without collusion or fraud against the government, into the hands of any of the claimants, so that they have become innocent holders thereof for value in respect of this claim of the government against it;" which charge the court refused to give, charging the jury, instead thereof, "that if the guilty acts alleged against the cotton in the libel were
39 proved against the cotton to the satisfaction of the jury, the cotton was thereby forfeited to the United States, and that the title of the government related back to the time of said guilty use of the cotton, and could not be defeated by any subsequent sale or purchase thereof, no matter how fair or innocent, to which the government was not itself a party; that in this case, if the jury should find the res (the cotton) guilty of the violations of the act of August 6th, 1861, alleged against it in the libel, their verdict should be for the United States and against the cotton;" to which refusal of the court to instruct the jury as above requested the said claimants at the time excepted, and they also at the time excepted to the above instructions given by the court on the same points, and tendered their bill of exceptions, praying that the same and the matters thereof might be preserved of record in said cause.

And be it also remembered, that the testimony in said cause being closed, the claimants requested the court to instruct the jury as follows, to wit: "That the government would not be entitled to a verdict on the ground of the cotton having been used in aid of the insurrection by its owner, or so used with the knowledge and consent of its owner or owners, unless it was in proof that the owner or owners so using or consenting to such use thereof had been personally convicted of so using or consenting to such use of the same by due process of law;" which last-mentioned instructions the court also refused to give, and instructed the jury, instead thereof, that if the cotton had been so used by its owners or by others with their knowledge and consent, that would be enough, so far as that matter was concerned, for a conviction in this case, without proof of such owner or owners having been personally convicted thereof by jury or otherwise outside of this case. The
law requires the conviction of the cotton, not the personal prosecution
40 and conviction of its owners. To which refusal of the court to in-
struct the jury as last above stated the claimants at the time excepted, and they also then and there excepted to the above-mentioned charge given by the court on the same point, and tendered their bill of exceptions praying that the same be signed and sealed and the matters therein preserved of record in said cause.

And be it also remembered, that afterwards, in the trial of said cause, the jury having returned their verdict therein in favor of the United States and against the said cotton, the said claimants afterwards and within four days of the rendition of said verdict, to wit, on the day of May, 1863, filed in said court their motions and reasons for a new trial in said cause, in writing; which motion and reasons are in the words and figures following, to wit: (see the copy, on page forty-five, containing motion and reasons;) which said motion the court afterwards, on the 4th day of May aforesaid, overruled. To which ruling of the court in refusing to grant a new trial in said cause the said claimants at the time excepted and prayed that their said motion and reasons, and the ruling of the court in respect thereof, and the exceptions thereto, be preserved in this their bill of exceptions and made a part of the record and proceedings in said cause.

And be it also remembered, that afterwards, on the same day and year last aforesaid, and before the court had rendered judgment in said cause, the said claimants filed their motions and reasons, in writing, in said court in arrest of judgment in said cause; which said motion and reasons are in the words and figures following, to wit: (see copy, on page forty-six of this
record, concerning motions;) which motion the court afterwards, on
41 the same day, overruled, and proceeded to enter of judgment in said
cause for the United States against said cotton, condemning and forfeiting the same to the United States government. To which ruling of the court in overruling said last-mentioned motion and refusing to arrest said judgment, said claimants at the time excepted and prayed that their said motion and reasons therefor, and the ruling of the court in respect thereof, and their exceptions thereto, be preserved of record in said cause, and that this their bill of exceptions and the matters there be signed and sealed and made part of said record.

Be it further remembered, that James Francis filed his petition as informer in said case on the 22d day of January, 1863, in the words and figures following, to wit: (copied on page 32;) that afterwards, when the same was called for hearing, the petition of said Francis in case No. 934 was also heard; that on said hearing in this case evidence was introduced on the part of said Francis tending to prove that said petitioner, Francis, before the filing of the libel in said cases No. 934 and No. 939, delivered a written statement to R. J. Howard, the surveyor of customs at St. Louis; that said delivery

of said written statement to said R. J. Howard, the surveyor, took place before any seizure was made of said cotton by said Howard as surveyor; that said written statement was addressed to R. J. Howard, surveyor of the port of St. Louis, and signed by said James Francis; that afterwards, and before the filing of the libel in this case, the said Francis took the said written statement from the custom-house at St. Louis, at the request of said Howard, to C. S. Hayden, esq'r., assistant attorney of the United States for
said district; that evidence was introduced on the part of the govern-
42 ment proving that subsequent to the filing of the libel in case No. 934,
and before the filing of libel in case No. 939, other and additional information was communicated to said attorney of the United States by the military authorities and other persons. Whereupon the court declared the law to be that the taking of said written statement by said Francis to the United States attorney at the request of said Howard, after the same had been addressed to the surveyor of the port and delivered to said surveyor, did not constitute said Francis an informer under the act of Congress of 6th August, 1861; and the court dismissed said petition. To which rulings by the court, and order, said Francis, by his proctor, then and there excepted, and prays that his bill of exceptions may be signed and made part of the record in this cause, which is done.

(Signed) SAMUEL TREAT, *Judge of said District Court.*

And on said ninth day of June, in said last-mentioned year, there was also filed in the clerk's office of this court an agreement between the proctors and district attorney, which agreement is in the words and figures following, to wit:

Agreement between proctors and dist. att'y.

UNITED STATES
vs.
269½ BALES OF COTTON, MARKED C. S A. } Cases No. 934 and No. 939. Agreement between counsel.

It is agreed by and between the dist. attorney, on the part of the United States, and by R. S. Hart, esq., proctor for Wolf, claimant, Asa S. Jones, esq., for Spink, cl't, and J. R. Shepley, esq., for Wm. M. McPherson, cl't, that in the above cause, in taking writ of error and appeal to the circuit court, the testimony in said cause, which is depositions on file in this court, need not be copied into the record, but that to save trouble and expense the original depositions now on file in the district court may be brought into
the circuit court, and there used in the same manner and to the same
43 effect in all respect, by all parties, as the same could or would be
used if the said depositions had been copied into the record in said
cases, on the writ of error and appeal to the circuit court.

(Signed) W. W. EDWARDS, *U. S. Dist. Att'y.*
GLOVER & SHEPLEY, *for McPherson.*
R. S. HART, *Proctor for Wolf.*

And on said ninth day of June, in said last-mentioned year, there was also filed in said district court a stipulation of counsel for the United States and for petitioner, James Francis, which stipulation is in the words and figures following, to wit:

Stipulation of counsel for U. S. and pet'r, Francis.

UNITED STATES *vs.* 269½ BALES OF COTTON. } No. 939. James Francis, petitioner, to be admitted as informer.

It is hereby stipulated and agreed by and between the United States attorney and the proctor for said Francis, petitioner, that the statement referred to in the bill of exceptions, addressed to R. J. Howard, surveyor of the port of St. Louis, and signed by James Francis, and now in the office of the said attorney of the U. S., may be read in the appellate court, on the trial of this case, without being copied into the transcript.

(Signed) WM. W. EDWARDS, *U. S. Dist. Att'y.*
J. K. KNIGHT, *Proctor for Informer.*

And on the eleventh day of June, in said last-mentioned year, there was filed in the clerk's office of this district court, by the claimants, and the petitioner, James Francis, their bond of appeal in this cause; which bond is in the words and figures following, to wit:

Bond of appellants.

Know all men by these presents that we, William M. McPherson, Alfred Spink, Daniel Wolf, and James Francis, as principals, and Alexander Frankenthal, as surety, are held and firmly bound unto the United States of America in the full and just sum of five hundred dollars, to be paid to the said United States of America, to which payment, well and truly to be made, we 44 bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals, and dated this tenth day of June, in the year of our Lord one thousand eight hundred and sixty-three.

Whereas lately, at the May term, 1863, of the district court of the United States for the eastern district of Missouri, in a suit depending in said court between the United States upon the libel of information of William Waller Edwards, attorney of the United States for the eastern district of Missouri, against two hundred and sixty-nine and a half bales of cotton, of which cotton Wm. M. McPherson claims 147 bales, Alfred Spink claims 176½ bales, and Daniel Wolf claims 93 bales, and judgment was rendered against the said cotton and the claimants thereof; and the said McPherson, Spink, Wolf, and Francis, having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing said United States to be and appear at a circuit court of the United States for the districts of Missouri, to be holden at St. Louis, Missouri, on the first Monday of October next: Now the condition of the above obligation is such that if the said William M. McPherson, Alfred Spink, Daniel Wolf, and James Francis, shall prosecute said writ to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else, to remain in full force and virtue.

(Signed) WM. M. McPHERSON. [SEAL.]
ALFRED SPINK,
Per ASA S. JONES. [SEAL.]
DANIEL WOLF,
Per R. S. HART, *his Att'y.* [SEAL.]
JAMES FRANCIS. [SEAL.]
ALEXANDER FRANKELNHAL. [SEAL.]

Signed and delivered in presence of.
Approved by—

SAMUEL TREAT, *Judge.*

45 And at said last-mentioned regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Monday, the sixth day of July, in said last-mentioned year, to wit:

Further time to clerk to file transcript.

On motion of the clerk of this court, the court ordered that the time of filing the transcript of the record in this cause to the circuit court of the United States for the districts of Missouri be extended to and include the first day of the month of September next.

Order superseding decrees of pay't, &c.

A writ of error having been sued out by the claimants herein, and the same having been allowed, and the bond, as required by law, having been executed, and citation issued and signed by the judge of this court, the court ordered that the decree heretofore made in this cause directing the fund proceeding from the sale of said cotton now in the registry of this court to the credit of cause No. 934 against said cotton be paid over to the district attorney for the sole use of the United States, be, and the same is hereby, superseded.

Order of pay't of fund to clerk of U. S. circuit court.

And the court further ordered that the said fund, after deducting therefrom the costs and expenses allowed against the same, be paid over by check to the order of Benjamin F. Hickman, clerk of the circuit court of the United States for the districts of Missouri, to be disposed of according to any orders which may be made by said circuit court in this behalf.

UNITED STATES OF AMERICA, *Eastern District of Missouri, ss:*

In the district court of said United States in and for said district.

I, the undersigned, clerk of said court, hereby certify the writings hereto annexed to be a true copy of the transcript of the record and proceedings in case No. 939, A. D. 1863, of the United States, libellant, against two hundred 46 and sixty-nine and a half bales of cotton, bearing the marks C. S. A., and other marks, as fully as the same remain on file and of record in said case in my office.

In witness whereof, I hereto sign my name and affix the seal of said court, at my office, in the city of St. Louis, in said district, this first day of September, in the year of our Lord eighteen hundred and sixty-three.

(Signed) BEN. F. HICKMAN, *Clerk of said Court.*

Hearing of cause.

On Tuesday, the 13th day of October, 1863, the following order was made, to wit:

THE UNITED STATES, libellant, *ag'st* 269½ BALES OF COTTON, WILLIAM M. MCPHERSON, Alfred Spink, and Daniel Wolf, claimants and pl'ffs in error.	Writ error from the United States district court for eastern district of Missouri.

This day come the parties, by their respective advocates, and this cause having been set for hearing on this day, by consent of said advocates, and said cause now being brought on for hearing, upon the record of the proceedings and agreements of parties, upon the writ of error as taken from the decree of the district court of the United States in and for the eastern district of Missouri, the same was in part heard, but not being concluded at the hour of adjournment, further proceedings are continued until to-morrow morning.

Memorandum.—His honor Judge Treat did not take part in the hearing of this cause.

Further hearing of cause and cause submitted for decree.

And on Wednesday, the 14th day of October, A. D. 1863, the following order was made, to wit:

THE UNITED STATES, libellant,
ag'st
47 269½ BALES OF COTTON, WILLIAM M. McPherson, Alfred Spink, and Daniel Wolf, claimants and plaintiffs in error.
} Writ of error from the district court of the United States for the eastern district of Missouri.

This day come again the parties by their respective advocates, and this cause was fully heard and submitted to the court for a decree therein.

Memorandum.—His honor Judge Treat did not take part in the hearing of this cause.

Decree of dist. court as to petition of Jas. Francis affirmed, and reversed as to other questions.

And on Friday, the 16th day of October, in the year of our Lord 1863, the following order was made, to wit:

THE UNITED STATES, libellant,
ag'st
269½ BALES OF COTTON, WILLIAM M. MCPHERSON, Alfred Spink, and Dan'l Wolf, claimants and plaintiffs in error.
} Writ of error from the district court of the United States for the eastern district of Missouri.

And now, on this day, come again the parties, by their respective advocates, and this cause having been brought on for hearing at the present term of this court, and having been argued and submitted to the court for decree upon the writ of error as taken from the district court of the United States for the eastern district of Missouri, and upon the case as made out and presented to this court by the record and writ of error, and the court, after examination of said record and writ of error, and hearing the arguments of the respective advocates for said libellants and plaintiffs in error, and 48 after being fully advised in the premises, do now finally adjudge, order, and decree that the decree of the district court of the United States for the eastern district of Missouri be, and the same is hereby, affirmed as to the petition presented to said court by James Francis to be admitted as informer in said cause, and as to the other questions presented to this court upon the said record and writ of error by claimants and plaintiffs in error, that the proceedings of said district court be, and the same are hereby, reversed, because that this court is of opinion that there is error in the record in the admission as evidence of the declaration of the rebel lieutenant mentioned in the deposition of Captain William Sands, and in accordance with such opinion, now orders that this cause be remanded to the said district court for further proceedings in accordance with this decision, without costs against said plaintiffs in error.

Memorandum.—His honor Judge Treat did not take part in the disposition of this cause.

And on Monday, the 26th day of October, in the year of our Lord 1863, the following order was made, to wit:

THE UNITED STATES, libellant, *ag'st* 269½ BALES OF COTTON, WM. M. MCPHESON, ALFRED Spink, and Daniel Wolf, claimants, and James Francis, informer, plaintiffs in error.	No. 939. Writ of error from the United States district court for the eastern district of Missouri.

49 This day comes James Francis, one of the plaintiffs in error, by his advocate, and files a bill of exceptions to the decree of the court rendered in this cause, which bill of exceptions was signed, sealed, and ordered to be entered of record in this cause; which bill of exceptions is as follows:

Bill of exceptions filed by Jas. Francis to decree of court.

In the circuit court of the United States for the districts of Missouri.

UNITED STATES *vs.* 269½ BALES OF COTTON.	Appeal case No. 2. October term, 1863. Writ of error from the district court.

Be it remembered, that when this cause came on to hearing on the writ of error from the district court, James Francis, one of the plaintiffs in error, appeared by his proctor, and after reading so much of the transcript as related to his case, (the whole record in the case being copied, it of course embraces all that relates to the case of James Francis,) and after reading the statements in writing referred to in said transcript signed by said Francis and addressed to Howard, the surveyor, which said statements in writing were read without objection, moved the court to reverse the judgment of the district court dismissing the petition of said Francis. But the court overruled said motion and thereupon affirmed the judgment of said district court dismissing said petition. To which ruling and judgment of the court 50 the said Francis, by his proctor, then and there duly excepted, and now comes and asks the court to sign and seal this his bill of exceptions, all of which is done accordingly.

[SEAL.] (Signed) R. W. WELLS, *Judge, &c.*

Second transcript of proceedings of dist. court.

And afterwards, to wit, on the 28th day of March, in the year of our Lord 1864, the following additional record was filed in this cause, being second transcript of proceedings of the district court of the United States for the eastern district of Missouri:

UNITED STATES OF AMERICA, *Eastern District of Missouri, ss:*

Be it remembered, that at a special term of the district court of the United States of America in and for the eastern district of Missouri, begun and holden at the city of St. Louis, in said eastern district, on Friday, the 23d day of October, in the year of our Lord eighteen hundred and sixty-three, the following proceedings took place on said last-mentioned day, to wit:

Presentation and filing certified copy of judgment of circuit court.

IN CASE NO. 939, OF THE UNITED STATES, libellant,
against
TWO HUNDRED AND SIXTY-NINE AND A HALF BALES OF cotton.

This day come the United States, by district attorney, who presented to the court a certified copy of the judgment of the circuit court of the United

States for the districts of Missouri, affirming the decree of the court heretofore made in this cause as to the petition of James Francis to be admitted as informer in said cause, and reversing the decree of this
51 court heretofore made as to the other questions presented upon the record and writ of error by the claimants and plaintiffs in error herein, because that said circuit court is of opinion that there is error in the record in the admission as evidence of the declaration of the rebel lieutenant mentioned in the deposition of Captain William Sands, and remanding said cause to this court for further proceedings in accordance with said decision; and the court ordered that said certified copy of said judgment be filed.

Application for a continuance refused.

At a regular stated term of this district court, begun and holden at the city of St. Louis, in said district, on Monday, the sixteenth day of November, in the year of our Lord eighteen hundred and sixty-three, the following proceedings took place in this cause on Tuesday, the first day of December, in said year, to wit:

This day came the United States, by district attorney, and also the claimants herein, by their respective proctors, and Lee J. Sharp, esq., proctor for claimant Alfied Spink, as upon affidavit, moved the court that this cause be continued until the next term of this court, and the court, on consideration thereof, refused said motion.

Hearing of cause.

This case being thereupon regularly called for trial, and all the parties herein being present, on motion of the district attorney, the court ordered that a jury come. And thereupon came said jury, to wit: Henry T. Darrah, E. Barnard, Joseph Hodgman, Peter Voorhis, J. W. Godfrey, Wyllis King, W. B. Hazeltine, E. E. Souther, Wesley Fallon, E. Foster, John Campbell, and J. P. Fisk, twelve good and lawful men, who were sworn well and truly to *to* try the issue joined herein, and this cause was in part heard, but not being concluded at the hour of adjournment, the court ordered that the further hearing thereof be continued until to-morrow morning.

Further hearing of cause.

52 And at said regular stated term of this court, begun and holden as aforesaid, the following proceedings took place in this cause on Wednesday, the second day of December, in said last-mentioned year, to wit:

This day come again the United States, by district attorney, and also the claimants herein, by their respective proctors, and the jury sworn herein being present, the cause was further heard, but not being concluded at the hour of adjournment, the court ordered that the further hearing of said cause be continued until to-morrow morning.

Further hearing of cause.

And at said regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Thursday, the third day of December, in said last-named year, to wit:

This day come again the United States, by district attorney, and also the claimants in this cause, by their respective proctors, and the jury sworn herein being present, this cause was further heard, but not being concluded at the hour of adjournment, the court ordered that the further hearing of said cause be continued until to-morrow morning.

Further hearing and cause submitted.

And at said regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Friday, the fourth day of December, in said last-mentioned year, to wit:

This day came again the United States, by district attorney, and also the claimants in this cause, by their respective proctors, and the jury sworn herein being present, this cause was further heard, and the hearing thereof being concluded, said cause was thereupon submitted; and the said jury, after having retired to consider of their verdict herein, afterwards returned into court the following verdict, to wit;

Verdict of the jury.

We, the jury, find that the allegations in the information are true, and find for the United States.

WYLLIS KING, *Foreman.*

53 And at said regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Saturday, the fifth day of December, in said last-mentioned year, to wit:

Judgm't in accordance with the verdict.

This day come again the United States, by district attorney, and also the claimants herein, by their respective proctors, and on motion of said district attorney, and in accordance with the verdict of the jury rendered in this cause on the fourth day of this month of December, the court ordered, adjudged, and decreed that the said two hundred and sixty-eight bales and two half bales of cotton seized in said cause, are forfeited to the said United States in manner and form as alleged in the libel of information in this cause, and further ordered, adjudged, sentenced, and decreed that said cotton be condemned to the use of said United States in pursuance of the prayer of said information.

Condemnation of proceeds.

And the said two hundred and sixty-eight bales and two half bales of cotton having been sold under the venditioni exponas issued out of this court in case No. 934 against said cotton, and the proceeds of such sale being in the registry of the circuit court of the United States for the districts of Missouri to the credit of said cause No. 934, and the same having been retained in the said registry in said cause No. 934, subject to the final orders in this cause, the court adjudged and decreed that said proceeds of said sale be condemned to the use of said United States; and the order of distribution having been made at a former term of this court, and the final decree therein having been appealed from to the circuit court of the United States for the districts of Missouri by the claimants of said fund, and the proceeds of said sale having been certified up to abide the judgment of said circuit court, it was further ordered, adjudged, and decreed that the distribution of said fund be subject to the order of said circuit court in accordance with this decree, and that a copy of this decree be certified to said circuit court. 54 And the court further adjudged, ordered, and decreed that the petition of James Francis, praying that he may be admitted as informer in this cause, be, and the same is hereby, dismissed at his costs, to be taxed.

And at said regular stated term of this district court begun and holden as aforesaid, the following further proceedings took place in this cause on Monday, the twenty-first day of December, in the year eighteen hundred and sixty-three, to wit:

Further time to file bill of exceptions.

On motion of James K. Knight, esquire, proctor for James Francis, petitioner to be admitted as informer in this cause, the court ordered that said petitioner have twenty days further time within which to file his bill of exceptions in said cause.

And at said regular stated term of this district court begun and holden as aforesaid, the following further proceedings took place in this cause on Monday, the eleventh day of January, in the year of our Lord eighteen hundred and sixty-four, to wit:

Further time to file bill of exceptions.

On motion of Lee J. Sharp, esquire, appearing for James K. Knight, esquire, proctor for petitioner, James Francis, the court ordered that said petitioner have one week's further time within which to file his bill of exceptions in this cause. And on the eleventh day of January, in the year of our Lord eighteen hundred and sixty-four, the said petitioner, James Francis, filed in the clerk's office of this district court his bill of exceptions in this cause, which bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

UNITED STATES
vs.
269½ BALES OF COTTON.

In the district court of the United States for the eastern district of ,
case No. 939.

Be it remembered, that James Francis filed his petition praying to be admitted as informer in said case on the 22d day of January, 1863, in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Eastern District of Missouri, ss:*

To the Hon. Samuel Treat, judge of the district court within and for said district:

55 The petition of James Francis, of the city of St. Louis and State of Missouri, respectfully showeth that at the times hereinafter mentioned he was, and still is, the informer against the two hundred and sixty-nine and ½ bales of cotton described in the libel in case No. 939, in this honorable court; that on or about the 2d day of October, 1862, he gave information to the board of trade at Memphis, and also sent a written statement to R. J. Howard, collector of the port of St. Louis, containing information upon which said cotton was seized by said collector, and subsequently libelled in case No. 934, in this honorable court; that on or about the 10th day of October, 1862, petitioner delivered another statement to said collector giving detailed information in reference to said cotton and of its liability to seizure and forfeiture to the U. S; and also, on said last-mentioned day, petitioner filed an information in writing with the district attorney of the U. S. within and for said district, upon which information said cotton was subsequently libelled in said case No. 939; that said cotton has been sold pendente lite and the proceeds of the sale thereof are now in the

registry on the instance side of this honorable court; that said case No. 939 has not as yet come to a final hearing in this honorable court. Wherefore petitioner prays that he may be admitted to appear in said case No. 939 as a party to the record as such informer, and that he may have such other and further relief in the premises as he may be entitled to receive.

(Signed) J. K. KNIGHT, *Proctor for Petitioner.*

James Francis, being sworn, says the matters and things as set forth in the foregoing petition are true according to the best of his knowledge and belief.

(Signed) JAMES FRANCIS.

Subscribed and sworn to before me this 22d day of January, 1863.

(Signed) BEN. F. HICKMAN, *U. S. Com'r, Mo. Dis.*

That afterwards, to wit, when said case was called for hearing, evidence was introduced on behalf of said petitioner as follows:

56 Henry Terrill testified in chief as follows, to wit: That he was a captain on the steamboat Gladiator, and was at Helena, Arkansas, on or about the 2d day of October, 1862, and was about to leave for St. Louis on that day; that on the last-named day the petitioner Francis requested witness to take a letter from him (Francis) to R. J. Howard, the surveyor of the port of St. Louis, and to deliver the said letter to said surveyor with all despatch. Affiant saw said letter before it was sealed, and petitioner read it to affiant. Said letter was about a lot of cotton which had been captured down the river and turned over to Quartermaster Winslow, at Helena, but was afterwards released by said Winslow to some parties claiming said cotton.

(Witness being here shown the letter signed by Francis and dated Helena, October 2d, 1862, hereinafter given, identified the same as the letter above referred to by him.)

Witness took the said letter from Francis and carried it to St. Louis as quickly as possible. Witness came on the steamer Gladiator to Cairo, and then took the railroad to St. Louis. He arrived at St. Louis on the 5th October and delivered the letter of Mr. Francis to one of Mr. Howard's deputies. Witness was unable to find the surveyor himself at the time.

The following, being the letter above referred to, was here read in evidence:

1*st letter of Mr. Francis.*

HELENA, *Oct. 2d, '62.*

MR. R. J. HOWARD, Esq.: I take this opportunity to inform you that there was about 277 bales of cotton brought up here, mainly marked "C. S. A.," on the steamboats St. Charles and Lucella, boats chartered by the government, and cost, I am informed, 8 soldiers' lives. It was to be consigned from Memphis to Henning & Woodruff. Mr. Grant and a Mr. Faucette seem to have charge of it. It was put off of the Gladiator on the wharf boat of the Memphis packet line, where the "C. S. A." is being taken off and
57 the bales repaired. It was put on the Gladiator here off of the government wharf boat. I saw it come on the boats from below as above stated and put on the government wharf boat here. There was also 40 bales marked C. H. and W., and some H., shipped at the same time. Also, 22 bales marked A. S. has gone up on the John J. Roe. Mr. Maufit and I have seen these things. You will please seize it. I write this for fear Mr. Maufit will be too late or loose the run of it. Mr. Terrill, the bearer of this, will explain the case to you. I expect to be up in a day or so, though I can-

not say positively. The cotton may also be remarked at Memphis, as well as repaired and reshipped. If so, perhaps Mr. Terrill may be able to tell you, in order that you may perfectly understand. I will recapitulate. The cotton was obtained below here at the sacrifice of human life on a government boat; brought to Helena on the same; stored here on a government wharf boat; marked C. S. A. The clerk on said wharf boat said it was government cotton, but when at Memphis, it was claimed by private parties, Grant and Faucet, and was to be consigned to Henning & Woodruff, of St. Louis.

Yours, JAMES FRANCIS, *Rev. Aid.*

P. S.—Captain Dozier, of the Iatan, who is owner of the Iatan that was with the expedition, will be a good witness, as I heard him say that he intended to tell the authorities here that they might take his boat and stick it in their asses before he would go on any more such expeditions. B. Weaver is capt. of the Iatan. The cotton boats were the boats fired into, and not the flag-of-truce boats, as has been reported.

The within is endorsed as follows: Report of Mr. Francis, rev. aid, dated Helena, Oct. 2d, 1862.

The following, being the second letter of Mr. Francis, was here read in evidence:

2d letter of Mr. Francis.

Mr. R. J. Howard, Esq., surveyor of the port of St. Louis: I beg leave to
submit this my report, to you in reference to a certain lot of cotton
58 now at Memphis, Tennessee, 277 bales of which was permitted on, I
believe, the 30th of September, 1862, by Quartermaster Winslow, of Helena, Ark., to be shipped northward on the steamboat Gladiator in the name of a Mr. Grant, who has a contract to furnish meat for the government at Helena, Ark. The facts connected with this transaction, as nearly as I have been able to collect them, are these: That on or about September 26th, 1862, General Hovey, commanding a division of the army of the southwest at or near Oldtown, Ark., on the Mississippi River, did order what he termed a scout, consisting of some four or five hundred men to proceed across the river, together with some fifty or sixty wagons; thence to penetrate beyond our lines into the enemies country to a point called Cold Water, in the State of Mississippi, some fifteen or twenty miles distant from Oldtown, and said scout there found a lot of cotton, estimated to be about 300 bales, guarded by a lieutenant and four soldiers of the rebel army, who claimed it for the Confederate government under some war assessment. The said scouts took the rebel lieutenant prisoner, and brought him, together with the 300 bales of cotton or thereabouts, to the Mississippi River, opposite Oldtown, on said wagons, guarded by said scouts, all then and now under pay and in the service of the government of the United States, and then and there did transfer the cotton from those wagons upon the steamboats St. Charles and Lucella and Iatan, which boats were in the service of and under pay from the government of the United States. The cotton was then brought to Helena, Ark., on the night of Sept. 29th, 1862, and on the 30th stored in the government wharf boat lying at Helena wharf, and on the same day (30th) permitted, as aforesaid, to Mr. Grant, Mr. Q. M. Winslow sending along with said permit a certificate stating to the effect that Gen'l Steele had stopped the said cotton at Helena for further investigation, and that in General Steele's absence, on an investigation held by himself,
he had decided that Mr. Grant was, in his judgment, the legal owner.
59 Now, sir, on the same day of the rendition of that judgment, I understand and expect to make appear that Mr. Boyd, from whose farm

the cotton was taken, and a Mr. Town, were in Helena claiming a portion of the cotton as their property, and representing the interests of other smaller claimants, and that said Grant did then and there offer said parties fifteen cents per pound for the cotton, proposing to give a draft on Henning & Woodruff, St. Louis, for the money, all of which the said parties declined. Subsequently I understood that a gentleman called Capt. Conely did effect a bargain with the said parties, taking their bill of sale, promising in return to give them a draft on McPherson, of St. Louis, provided he could get it away from Mr. Grant, who, I believe, pretended after to hold it under a bill of sale from some other parties I also understood that the parties, Grant & Co., have now sold their chances to a Mr. Spinks, who is aware of its condition. The board of trade at Memphis, on my request, have concluded to send it to your office for further investigation. When this cotton was first taken it is said mainly to have been marked "C. S. A." on the ends, with various other side marks. Now, my plea is, that no private parties have any right to purchase it after its seizure by the military authority of the United States. And if these parties had a legal right to sell it at the time of its seizure, that the government is still amenable to them for damages, as well as being at the expense of said expedition, having these parties been by force of arms, put in fear of great bodily harm and thus constrained to do so.

Wherewith, submit to you the names of witnesses to establish the foregoing facts, this Oct. 10th, 1862.

(Signed) JAMES FRANCIS, *Rev. Aid.*

St. Louis, *Oct. 18th*, 1862.

Mr. J. H[illegible]WARD, Esq., *surveyor of the port of St. Louis:*

In addition to the accompanying report, I expect to be able to prove that some of the original marks on the cotton recited in my report have been removed since leaving Helena, and that 40 bales and bags belonging
60 to the seizure was shipped at the same time in a name unknown to
me at present, which was marked C. H., some A S., some H., some W.; and that the lives of soldiers were not only exposed, but some not definitely known to me were actually lost in that expedition. My witnesses are as follows: Morse, who has had a contract to furnish corn, &c., at St. Louis; Capt. Dozier, a river man, said to be owner of one of boats of expedition; Captain Woolfork, of the White Cloud; Thomas M. Quarles, one mile north of Helena; Henry Moony, of Helena, Ark.; Pratt, a detective in Q. M. department, St. Louis; D. L. Canfield, 1st lieut. and Q. M. 10th Ill. cavalry, at Oldtown; Henry Terrill, No. 39 North levee, can identify said cotton.

(Signed) JAMES FRANCIS, *Rev. Aid.*

Endorsed on back: 2d report of Mr. Francis, rev. aid., St Louis, Oct. 10th, 1862.

I hereby certify that I have compared the within and foregoing letter of information with the original on file in the U. S. district attorney's office, and that the same is a true copy.

(Signed) J. K. KNIGHT.

The above papers were filed in place of and as originals, the latter not being found.

(Signed) C. S. HAYDEN, *Ass't Dist. Att'y.*

Charles S. Hayden then testified as follows: I am assistant U. S. district attorney at St. Louis. I drew and filed the libels in this court in cases No. 933, United States *vs.* 269½ bales of cotton, and No. 939, the present case. I first drew and filed a libel No. 934. Both these libels were filed against

the same cotton, the first under the act of July 13th, 1861, and the second under the confiscation act of Aug. 6, 1861. The first, No. 934, was filed on the 13th Oct., 1862, and the second on the 18th Oct., 1862, five days after. These statements or letters signed by Mr. Francis, the petitioner, and addressed to Mr. Howard, the surveyor of the port, I recognize. They
have been in the dist. attorney's office for some time. They were
61 brought into me from the custom-house, and given to me as assistant
U. S. district attorney, as papers usually are in such cases. When the surveyor seizes goods or merchandize he reports the case to the district attorney, and hands to that officer the papers connected with the case, that the libel may be drawn and suit brought, together with a statement, generally an oral one, of the facts. It was in this way that these papers came to me from Mr. Howard, the surveyor, and being so received were placed by me among the papers of the district attorney's office relating to revenue cases. I cannot say who was the person who handed these papers in from Mr. Howard's office. Mr. Howard sometimes hands such papers to the dist. attorney, and sometimes this is done by a clerk or a deputy of the surveyor. The endorsements on these papers are mine—in my writing. I had these statements before me when I drew libel No. 934. Between the time I drew libel No. 934 and the time I drew libel 939 detailed information in regard to this cotton, its capture and subsequent history, was given me by McPherson and other parties, and various papers from the military authorities and other sources handed to me. I then drew libel No. 939, under the confiscation act of August 6, 1861.

Richard J. Howard testified in substance as follows: I am the surveyor of the port of St. Louis. Some time in the early part of October, 1862, I saw the written statements of Mr. Francis in reference to said cotton. I don't recollect whether Mr. Francis brought them to my office or not. I had a conversation with Mr. Francis about the cotton seized in this case. I think I told Mr. Francis to take the papers into the district attorney's office. I don't recollect particularly what transpired between Mr. Francis and myself. When the cotton came up on the Dickey, I sent one of my deputies to seize the cotton. The cotton was seized by my deputy the day it arrived here, I think. I think it was libelled and seized by the marshal on the same day.
The written statements signed by Mr. Francis being here shown
62 witness, he said: These are in the handwriting of Mr. Francis. These
statements signed by Mr. Francis, and addressed to me, now produced, are the statements I received in regard to the cotton, and which I requested Mr. Francis to take into the district attorney.

The petitioner here rested, and the following evidence was introduced on behalf of the government, to wit:

Wm. M. McPherson next deposed and said as follows: I got a telegram from Capt. Conley, my agent in regard to this lot of cotton, asking me to come to Memphis. I started down, and when 15 miles below Cairo, met the st'm'r John H. Dickey with Capt. Conley and the cotton on board. Capt. Conley hailed me, and I got off the boat I was on, and then went on the Dickey up to St. L. While on board I learned all about the cotton from Conley. Capt. Conley gave me all the papers he had in relation to the cotton, among them the affidavits of Boyd and Towns, stating the particulars of the capture of the cotton. I also saw the bills of lading on board the boats, consigning the cotton to Major Rob't Allen, ch'f quartermaster at St. Louis, from the U. S. mil. auth. at Memphis. On my arrival in St. Louis, I went to the dist. attorney's office, and told him or his assistant that I had full information in regard to the cotton and the manner of its taking, and that I could furnish them any of the papers I had to look at. The next morning I went to see Maj. Allen; told him the

same thing; that I believed I was equitably entitled to 147 bales I claimed, but that I wanted a full investigation of the case. Maj. Allen then handed me the bill of lading and some letters and papers that had been sent him in relation to this cotton, and told me that I could examine them and could also show them to the dist. att'y. I took the papers, and after examining them,
63 took them to the district attorney's office and left them there, together with the affidavits given me by Capt. Conley for the dist. att'y's examination, and on that day or the next the dist. att'y told me he should file another libel against the cotton. I talked with the dist. attorney in my interviews with him about the matter, the circumstances of the original taking of the cotton, and told him I thought the facts ought all to be brought out, and that I would give him any aid in my power. The first time I saw the district attorney about this cotton was the first day the cotton arrived here. All my interviews with him giving him information and papers were before the filing of the libel No. 939, under the act of Aug. 6, 1861. The military papers awarded to me by Maj. Allen, and by me given to the dist. attorney, contained various information in regard to the history and seizure of the cotton as subsequently developed on the trial. Before I went down the river Mr. Howard, the surveyor, showed me a letter; my impression is that it was from an officer in the army, giving an account of taking some cotton from Mississippi, and troops being killed on the expedition. This letter of Mr. Francis I do not think was the letter so shown to me, yet it may have been.

This was all the evidence in the case in reference to said petition. It is admitted by the proctors for the respective parties that petitioner Francis was admitted as informer in case No. 934. And the court thereupon dismissed said petition. To which ruling and order of the court the said petitioner Francis, by his proctor, then and there duly excepted, and now prays that this his bill of exceptions may be signed and made a part of the record in this case, which is accordingly done.

(Signed) SAMUEL TREAT, *Judge.* [SEAL.]

UNITED STATES OF AMERICA, *Eastern District of Missouri, ss:*

64 I, Benjamin F. Hickman, clerk of the district court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto annexed to be copy of the record and proceedings as between the United States and James Francis, claiming to be informer, since the filing of the mandate or certified order of the circuit court of the United States for the districts of Missouri, reversing the decree of the district court of the United States for the eastern district of Missouri, rendered in case No. 939, A. D. 1862, of the United States of America against two hundred and sixty-nine and one half bales of cotton, James Francis claiming to be informer, as fully as the same remains on file and of record in said case in my office.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this twenty-eighth day of March, in the year of our Lord eighteen hundred and sixty-four.

(Signed) BEN. F. HICKMAN, *Clerk of said Court.*

Motion to diminish record, &c.

And on Thursday, the 7th day of April, A. D. 1864, the following order was made in this case, to wit:

THE UNITED STATES, defendant in error, *ag'st* 269½ BALES OF COTTON, JAMES FRANCIS, informer, plaintiff in error.	Writ of error from the district court of the United States for the eastern district of Missouri.

This day comes the plaintiff in error, by attorney, and files his motion suggesting diminution of the record, and praying that the same may be reformed.

Order to attach record disposed at Oct. term to present record.

65 And on Friday, the 8th day of April, A. D. 1864, the following order was made, to wit:

THE UNITED STATES, defendant in error,
ag'st
269½ BALES OF COTTON, JAMES FRANCIS, informer, plaintiff in error.

Writ of error from the district court of the United States for the eastern district of Missouri.

This day come the parties, by attorneys, and by consent and in answer and satisfaction of the motion filed suggesting a diminution of the record herein, it is ordered that the record heretofore filed on writ of error in this cause, and being the record disposed of by this court at the last October term, and on file in this court, be attached to the present record now before this court as part of the proceedings in this cause, without requiring the clerk of the district court of the United States for the eastern district of Missouri to make any other copy of such record and proceedings.

Memorandum.—His honor Judge Treat did not sit or take part in the proceedings in this case.

And on Wednesday, the 13th day of April, A. D. 1864, the following order was made, to wit:

THE UNITED STATES, defendant in error,
ag'st
269½ BALES OF COTTON, JAMES FRANCIS, informer, plaintiff in error.

Writ of error from the district court of the United States for the east. district of Missouri.

This day come the parties, by attorneys, and this case being regularly called for hearing, upon the writ of error as granted from the judgment rendered by the district court of the United States for the eastern district of Missouri, and upon the records as filed and presented herein, and said attorneys being prepared to argue the questions arising upon such records, the same were in part argued, but not being concluded at hour of adjournment, further proceedings are continued until to-morrow morning.

Memorandum.—His honor Judge Treat did not take part in the hearing of said case.

And on Thursday, the 14th day of April, A. D. 1864, the following order was made in this cause, to wit:

66 *Decree of circuit court.*

THE UNITED STATES, defendant in error,
ag'st
269½ BALES OF COTTON, JAMES FRANCIS, informer, plaintiff in error.

Writ of error from the district court of the United States for the eastern district of Missouri.

This day come the parties, by attorneys, and the attorney for plaintiff in error files his motion in writing asking that the record of the appeal case of the United States against two hundred and sixty-nine and a half bales of cotton, James Francis, informer, and being No. 934, be annexed to and made a part of the record in this case, for the reasons herein set forth; and the court having examined said motion, and being advised of and concerning the same is of opinion that the same ought not to be allowed, and in accordance with such opinion, now orders that said motion be, and the same is hereby, overruled. And thereupon the argument of counsel and hearing of the case, upon the record of the district court of the United States for the eastern district of

Missouri on the writ of error herein, was resumed and concluded, and the court being advised of and concerning the errors as alleged to have been committed by said district court, is of opinion that there was no error in the rendition of the judgment in this case by said district court, and that said judgment ought to be affirmed; and in accordance therewith, it is now considered by this court that the judgment of the district court of the United States for the eastern district of Missouri, as rendered in this case, be, and the same is in all things hereby, affirmed, and that James Francis, the plaintiff in error, pay the costs incurred by sueing out said writ of error herein, and that execution issue therefor. And it is further ordered that a certified copy of this order be made out and delivered to the clerk of said district court, to be filed in said case, and that the fund as certified into this court as subject to judgment to be entered in this case or a decree to be entered in appeal case No. 934, be certified back to said court, to be 67 distributed according to the judgment to be entered up by said district court, in relation to said fund.

Memorandum.—His honor Judge Treat did not take part in the hearing or disposition of this case.

And on Friday, the 15th day of April, A. D. 1864, the following order was made, to wit:

Motion of James Francis to set aside judgment overruled and bill of exceptions allowed.

The United States, defendant in error, *ag'st* 269½ Bales of Cotton, James Francis, informer, plaintiff in error.	Writ of error from the United States district court for the eastern district of Missouri.

This day comes again James Francis, the plaintiff in error herein, by his attorney, and files his motion in writing to set aside the judgment of the court as rendered herein, upon the grounds and for the reasons as set forth in said motion, and the court having examined the same, and being advised in the premises, now orders that said motion be, and the same is hereby, overruled. And thereupon the said James Francis, plaintiff in error, as aforesaid, files his bill of exceptions, excepting to the decision and judgment of the court as rendered herein, which, being examined, is allowed and signed, sealed and ordered to be made part of the record in this case.

Memorandum.—His honor Judge Treat did not take part in the hearing of said motion or proceedings in this case.

Which bill of exceptions is as follows:

Bill of exceptions.

United States of America, *District of Missouri:*

In the circuit court of said United States within and for said district.

United States, def't in error, *vs.* 269½ Bales of Cotton, James Francis, informer, pl'ff in error.	No. 68 on appeal docket, April term, 1864, writ of error from district court.

Be it remembered, that when this case was called for hearing on writ of error from the district court on the record in this case, the parties appeared by their respective proctors. Pl'ff in error made the following 68 motion:

Motion to annex record of appeal case.

United States of America, *District of Missouri, ss:*

United States *vs.* 269½ Bales of Cotton, James Francis, informer and pl'ff in error.	Writ of error from the district court, No. 939, and No. 68 on appeal docket.

Now, at this day, come the said informer and pl'ff in error, by his proctor, and moves the court that the record of the appeal case of the U. S. *vs.* 269½ bales of cotton, James Francis, informer, and being No. 934, be annexed to and made a part of the record in this case, for the following reasons:

First. Because both cases are against the same property in rem., and said informer is petitioner in both cases.

Second. Because the rights of the said informer has been prejudiced by the action of the district attorney in moving the dismissal of said appeal case, and by the dismissal of said appeal case by the court, and by the order remitting the fund to the district court.

Third. Because it will be necessary for the said informer to have the record of said appeal case before the Supreme Court on the writ of error to be sued out in this case, as both said cases are against the same res., and because the records in the two cases run into each other and are inseparable.

(Signed) J. K. KNIGHT,
Proctor for said informer and Pl'ff in error.

Which the court overruled; o which ruling of the court the pl'ff in error, by his proctors, then and there duly excepted. After the argument of counsel and the inspection of the record, the court affirmed the judgment of the district court. To which ruling and judgment of the court the plaintiff in error, by his proctor, then and there duly excepted. Pl'ff in error then moved the court to set aside said judgment. 69

Motion to set aside judgment.

United States *vs.* 269½ Bales of Cotton, James Francis, informer, pl'ff in error.	No. 68, apeal docket, April term, 1864, writ of error to district court.

Now, at this day, comes the pl'ff in error and moves the court to set aside the judgment in this case, and grant him a new trial for the following reasons:

First. Because the court erred in overruling the motion of plaintiff in error to attach to the record in this case the record of the appeal case No. 934 from district court.

Second. Because the court erred in rendering judgment against plaintiff in error and in affirming the judgment of the district court.

(Signed) J. K. KNIGHT, *Proctor Pl'ff in error.*

Which the court overruled; to which action and judgment of the court the plaintiff in error then and there duly excepted, and now prays that this bill of exceptions may be signed, sealed and made part of the record in the cause; all which is done accordingly.

(Signed) R. W. WELLS. [seal.]

Copy of bond in granting writ of error.

The following is a copy of the bond executed and filed in this cause upon the granting of a writ of error from the decision rendered by the circuit court of the United States for the district of Missouri, viz:

Know all men by these presents that we, James Francis, as principal, and John M. Krum, as surety, are held and firmly bound unto the United States of America in the full and just sum of one thousand dollars, to be paid to the said United States of America, their heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 16th day of May, in the
70 year of our Lord one thousand eight hundred and sixty-four.

Whereas lately, at the April term of the circuit court of the United States for the district of Missouri, in a suit depending in said court between the United States of America, libellants, and James Francis, petitioner and plaintiff in error, judgment was rendered against the said James Francis; and the said James Francis having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now the condition of the obligation is such that if the said James Francis, petitioner and pl't'ff in error, shall prosecute said writ to effect, and answer all damages and costs if he fails to make good his plea, then the above obligation to be void; else, to remain in full force and virtue.

(Signed) JAMES FRANCIS. [SEAL.]
(Signed) JOHN M. KRUM. [SEAL.]

Sealed and delivered in presence of—

Approved by—
(Signed) SAMUEL TREAT,
Judge of the U. S. Dist. Court of East. Dist. of Missouri.

UNITED STATES OF AMERICA,
Circuit Court for the Districts of Missouri, ss:

I, Benjamin F. Hickman, clerk of the circuit court of the United States in and for the districts of Missouri, do hereby certify the writings hereto annexed to be a copy of the record and proceedings of said court in case of the United States of America against 269½ bales of cotton, bearing the marks C. S. A. and other marks, James Francis, informer, as fully as the same remain on file and of record in said cause in my office.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said districts, this 15th day of December, A. D. 1864.

[SEAL.] BEN. F. HICKMAN, *Clerk of said Court.*

Filed 16th January, 1865.

SUPREME COURT OF THE UNITED STATES.

No. 245.

JAMES FRANCIS, PLAINTIFF IN ERROR,

VS.

THE UNITED STATES, DEFENDANT IN ERROR.

BRIEF OF THE PLAINTIFF IN ERROR.

BY

JAMES K. KNIGHT,

OF

SAINT LOUIS.

IN THE SUPREME COURT OF THE UNITED STATES.

James Francis, Plaintiff in Error,
vs.
The United States, Defendant in Error.

STATEMENT.

This case originated in a libel of information filed by the District Attorney of the United States for the Eastern District of Missouri, in the District Court for said district, on the 18th day of October, 1862. The libel was numbered 939 on the docket of said court, and filed against 269½ bales of cotton, and against which it prayed a condemnation and decree of forfeiture under the act of Congress entitled "An act to confiscate property used for insurrectionary purposes," approved August 6, 1861.

The libel charges in its first article, that said cotton had been brought from a certain district in the State of Mississippi into said Eastern District of Missouri. In its second and third articles it recites the proclamations of the President of the United States of the 13th of April, 1861, and the 25th of July, 1862. The fourth article charges, in substance, that said cotton had been sold, used, and employed by inhabitants of the State of Mississippi engaged in insurrection against the United States, in aid of the insurrection, and with the intent of aiding the same, in contravention of said act of Congress of 6th of August, 1861.

The fifth and sixth articles of said libel charge, in substance, that on the 26th day of September, 1862, said cotton was taken from said insurrectionists in the State of Mississippi and brought in Government wagons to the Mississippi river, in charge of agents of the Government of the United States, and then put on board of Government boats and conveyed to Helena, in the State of Arkansas, and that from thence it was brought to Memphis, and finally to St. Louis, Mo. (See printed record, p. 3, et seq.)

Upon the filing of this libel the following ***order*** for ***warrant*** of ***detention*** was entered of record, to-wit:

"This day come the United States by District Attorney, who filed his libel of information in this cause; and it appearing to the court, from the return of the marshal on the ***warrant*** of ***arrest*** heretofore issued in case No. 934, in said court, that he had already arrested said 269½ bales of cotton, under said warrant of arrest, on motion of said District Attorney the court ordered that a ***warrant*** of ***detention*** be issued in this cause."

The warrant of detention was accordingly issued, and upon which the Marshal, on the 17th of November, made his return, "that he had executed the same by ***detaining said cotton*** in his possession for safe custody." (See Record, p. 8.)

On the 29th of November thereafter, Daniel Wolf intervened in said cause, claiming 93 bales of said cotton.

On the 1st December Wm. M. McPherson intervened therein, claiming 147 bales of said cotton.

On the 4th December Alfred Spink intervened, claiming 176½ bales of said cotton.

On the 22d day of January, 1863, James Francis, the plaintiff in error, filed his petition, praying to be admitted as Informer on the record in said cause, in the words following, to-wit:

"***To the Honorable Samuel Treat, Judge of the District Court within and for said district:***

"The petition of James Francis, of the city of St. Louis and State of Missouri, respectfully showeth that at the times hereinafter mentioned he was, and still is, the informer against the 269½ bales of cotton described in the libel in case No. 939, in this honorable court; that on or about the 2d day of October, 1862, he gave information to the Board of Trade at Memphis, and also sent a written statement to R. J. Howard, Collector of the port of St. Louis, containing information upon which said cotton was seized by said collector, and subsequently libelled in case No. 934, in this honorable court; that on or about the 10th day of October, 1862, petitioner delivered another statement to said collector, giving detailed information in reference to said cotton and of its liability to seizure and forfeiture to the United States; and also on said last mentioned day petitioner filed an information in writing, with the District Attorney of the United States, within and for said district, upon which information said cotton was subsequently libelled in said case No. 939; that said cotton has been sold *pendente lite,* and the proceeds thereof are now in the Registry, on the instance side of this honorable court; that said case No. 939 has not, as yet, come to a final hearing in this honorable court.

"Wherefore, petitioner prays that he may be admitted to appear in said case No. 939 as a party to the record as such Informer, and that he may have such other and further relief in the premises as he may be entitled to receive." (See Record, p. 15 *et seq.*)

It will be seen from these proceedings that the right of the petitioner to be admitted as Informer was a question independent of and properly preliminary to the main issues between the United States and the several claimants. It is also to be observed that the Record discloses two transcripts; the second beginning on page 29 of the Record. This *duality* in the record was occasioned by the decree of the Circuit Court, which affirmed *in part* and reversed *in part* the decree of the District Court. (See page 28.)

In the bill of exceptions, saved on the first hearing of the petition of the plaintiff in error, the whole of the evidence is not set out *in extenso,* but enough is set out to show upon what the District Court based its declaration of the law. (See Record, pp. 24--25.) In the second transcript the evidence upon the hearing is set forth at length. (See p. 33, *et seq.*)

It was conceded on the hearing that the plaintiff in error had been admitted as informer on the record in case 934 against the same lot of cotton. The two letters signed by the plaintiff in error, and addressed to R. J. Howard, Surveyor of the port, were identified and read in evidence, without objection, and contain a detailed statement of the circumstances attending the seizure of this cotton by the Federal forces under General Hovey, and its subsequent history until it reached St. Louis, Mo.

In the letter of date October 10, 1862, is the following statement of facts: "That on or about September 26th, 1862, General Hovey, commanding a division of the Army of the Southwest, at or near Oldtown, Ark., on the Mississippi river, did order what he termed a scout, consisting of some four or five hundred men, to proceed across the river, together with some fifty or sixty wagons; thence to penetrate beyond our lines into the enemy's country to a point called Coldwater, in the State of Mississippi, some fifteen or twenty miles distant from Oldtown, and the said scout there found a lot of cotton, estimated to be about 300 bales, guarded by a lieutenant and four soldiers of the rebel army, who claimed it for the Confederate Government under some war assessment. The said scout took the rebel lieutenant prisoner, and brought him, together with the 300 bales of cotton, or thereabouts, to the Mississippi river, opposite Oldtown, on wagons guarded by said scout; all then, and now, under pay and in the service of the Government of the United States, and then did transfer the cotton from those wagons upon the steamboats St. Charles, Lucella, and Iatan, which boats were in the service of and under pay from the Government of the United States."

The letter then goes on to give the subsequent history of the cotton, and names some seven or eight witnesses by which the facts stated in his letter could be proved.

It was not denied on the trial that Francis, the plaintiff in error, gave the information upon which libel No. 934 was based, and under which the original seizure of this cotton was made. On the contrary, it stood admitted on the record of the court in case No. 934 that he gave the information upon which said cotton had been seized in said case.

The only question arising on the trial was whether the petitioner had filed with the District Attorney "an information," within the terms and meaning of the Act of the 6th of August, 1861.

At the close of the evidence, on the first hearing, the District Court declared the law to be—

"*That the taking of the written statement by said Francis to the United States Attorney at the request of said Howard, after the same had been addressed to the Surveyor of the Port, and delivered to said Surveyor, did not constitute said Francis an Informer under the Act of Congress of the* 6*th of August,* 1861." (See Record, p. 25.)

The evidence at the second hearing, although not the same as on the first, is preserved in full in the Bill of Exceptions. (See Record p. 32.) Between the first and second hearing of this case, the recollection of some of the witnesses had materially failed them in reference to what had actually occurred in reference to this cotton.

It will be seen that the questions raised by the facts disclosed in either of the transcripts were the same and were—

First. Whether a written statement, addressed to a person other than the District Attorney, could be "*An Information*" within the meaning of said Act of 6th of August, 1861.

Second. Whether the Petitioner Francis could, after the said written statement had been delivered to the Surveyor of the port, obtain such possession or control over the same (by the consent of the Surveyor) as to be able "to file" the same with the District Attorney within the meaning of the said Act.

These are the only questions of law that were raised by the facts disclosed in evidence at the hearing, as will appear by the declaration of the District Judge, (see Record, p. 25) and these are the questions the Plaintiff in error would be desirous of discussing in this honorable conrt, were it not for other grave errors committed during the progress of this case in both the District and Circuit Courts.

It will be seen by reference to the Record, pages 4, 5, 8, 15, 24, 27, 31, 36, 37, 38, 39 and 40, that another libel, to-wit, No. 934, on the Docket of the District Court, had been filed against the same cotton (prior to the libel in this case,) under the act of Congress of 13th of July, 1861, entitled "an Act further to provide for the collection of duties on imports and for other purposes." The proceedings under the two libels progressed ***simultaneously*** against the ***same cotton***. The libel No. 934, was on the ***instance*** or admiralty, and libel No. 939, on the *exchequer* or common law side of said District Court. The first named went up by ***appeal*** and the last by ***writ of error*** to the Circuit Court. The cotton was originally seized in case No. 934, and was sold therein *pendente lite* and the proceeds of the sale thereof, to-wit, $60,838 50 remained in said case on the fifth of June, 1863, the date of the decree of condemnation in this case. (See Record, p. 22.)

On the 10th of June, 1863, an appeal was taken and perfected in case No. 934, from the decree of the District Court to the Circuit Court.

On the 6th of July thereafter, (nearly a month after said appeal had been perfected), the following orders were made in case No. 939, to-wit: "A writ of error having been sued out by the claimants herein, and the same having been allowed and the bond, required by law, having been executed and citation issued and signed by the Judge of this Court; the Court ordered that the decree heretofore made in this cause directing the fund proceeding from the sale of said cotton, ***now in the registry of this Court, to to the credit of cause No.*** 934, against said cotton be paid over to the District Attorney for the sole use of the United States, be and the same is hereby superceded. And the Court further ordered that the said fund, after deducting therefrom the costs and expenses allowed against the same be paid over by check to the order of Benjamin F. Hickman, Clerk of the Circuit Court of the United States, for the Districts of Missouri, to be disposed of according to any order which may be made by said Circuit Court in this behalf." (See Record, p. 27.)

The following are the dates and order of proceeding in the two cases in the District Court:

UNITED STATES
vs.
269½ BALES COTTON. } No. 934.
On Instance side of the Court.

1862. Oct. 13.	Libel filed and warrant of arrest issued.
“ “ 20.	Order of sale *pendente lite* and *venditione exponas* issued.
“ Dec. 1.	Marshal's return of sale on writ.
“ “ 29.	Petition of Informer filed.
1863, Feb. 3.	Petition of Informer granted.
“ June 5.	Judgment for freight for $176 43, and cause dismissed on motion of District Attorney.
“ “ 10.	Prayer for appeal allowed and appeal perfected.

UNITED STATES
vs.
269½ BALES COTTON. } No. 939.
On the Common Law side of the Court.

1862. Oct. 18.	Libel filed and warrant of detention issued.
1863. Jan. 22.	Petition of Informer filed.
“ Feb. 3.	Hearing and rejection of Informer's petition.
“ June 5.	Judgment of condemnation.
“ “ 11.	Writ of Error sued out.
“ July 6.	Order to pay over fund in in case No. 934, to Clerk of Circuit Court.

The order of proceeding in said case No. 934, is not fully set out in the Record, for the reason that the Circuit Court overruled the motion of the Plaintiff in Error, to have the Record in that case annexed to, and made a part of the Record in this case. [See Record, p. 40.]

It will be seen by the Record that the Plaintiff in Error, by his proctor, took and saved his exceptions to the irregularities and errors complained of, in both the District and Circuit Courts.

The discrepancies disclosed in the two transcripts from the District Court cannot be explained by the ordinary rules of judicial procedure. It therefore, becomes proper and necessary to state, in order that the history of this transaction may be fully before this Court, that it had become a customary practice with the Assistant District Attorney, who at the time exclusively represented the United States in these and similar cases, to appear and prosecute for Informers, for which services on the part of Informers, he sometimes agreed upon contingent fees.

It had also grown into a custom in the office of the Surveyor of the port, that a division of the Informer's share should be made by such employees of his office or of the Treasury Department as became Informers.

Francis demurred to both of these customs and utterly refused to accede to the same or either of them.

In his obstinacy in this matter he incurred the active hostility of both of these officers in the prosecution of his claim as Informer.

These statements are made on the express authority and request of Francis himself, and with a view of elucidating some of the proceedings disclosed in the Record, which otherwise might seem unintelligible to this honorable Court.

ARGUMENT.

FIRST.

The Circuit Court erred in affirming the judgment of the District Court dismissing the petition of the Plaintiff in Error to be admitted as Informer.

The Act in question, entitled, "An Act to confiscate property used for insurrectionary purposes," under which Plaintiff in Error claims, was enacted to meet a public emergency and should be beneficially construed. The third section thereof is as follows:

> "SECTION 3. And be it further enacted, that the Attorney General or any District Attorney of the United States, in which said property may at any time be, may institute the proceedings of condemnation, and in such case they shall be wholly for the benefit of the United States, or any person may file an Information with such Attorney, in which case the proceedings shall be for the use of such Informer and the United States in equal parts." [12 U. S. Statutes, p. 319.]

[A.] This law is unquestionably in its nature remedial. The familiar principle that remedial statutes are to be liberally construed to suppress the mischief, and promote the remedy, has uniformally been adopted by this Court.

Embargo acts have been so construed from the earliest adjudications of this Court. [La Vengeance, 3 Dallas, p. 297; Jones vs. Shore's Executor, 1 Wheat., p. 462.]

These decisions were uncontrolled by the Judiciary Act of 1789, which includes within the admiralty jurisdiction all seizures for forfeitures, under laws of impost, navigation, and trade on the navigable waters of the United States.

In the last named case, (1 Wheat., p. 462,) when the 91st section of the act of March 2, 1799, was up for construction and the question was, whether the Surveyor in office at the date of the decree, or the representatives of the former Surveyor, who made the seizure and instituted the proceedings, were entitled to the distributive share. Judge Story held this language:

"It is a maxim of natural justice, *que sentit commodum sentire debet et onus*, and the words of the statute ought to be very clear that should lead to a different determination."

The case of the Caledonian, (4 Wheat., p. 100,) is to the same effect.

Revenue statutes have uniformly received a beneficial construction. [The Schooner Betsey, 4 Cranch, p. 443.]

A similar construction has been applied to act of 1794, prohibiting the slave trade. [The Schooner Sally, 2 Cranch, p. 406.]

Seizures *jure belli* receive a similar construction when within the prize jurisdiction. [The Amiable Nancy, 3 Wheat., p. 546; The Ship Emulous, 1 Gal. R., p. 563.]

Seizures *jure belli* on land, although not within the prize jurisdiction, are to be governed rather by rules applicable to prize Courts, than to those adjudging municipal confiscations. [U. S. vs. Brown, 8 Cranch, p. 110 and 139.]

Seizures *jure belli*, whether on the high seas or on land, involve considerations of international law. [The Brig Amy Warwick, 2 Black, p. 635; Mrs. Alexander's Cotton, 2 Wallace, p. 404; The Venice, 2 Black, p. 258.]

Acts of Congress or proclamations of the Executive, although made in view of a temporary emergency, are not to receive a narrow municipal construction, but should be construed in the light of the *jus gentium*. [The Cornelius, 3 Wal., p. 214; The Cheshire, 3 Wal., p. 231; The Admiral, 3 Wal., p. 603; The Reform, 3 Wal., p. 617.]

[B.] This act, like the act of the 13th of July, 1861, is not a penal statute. It is in its nature a revenue statute, and should be liberally construed to accomplish the object in view. [United States vs. 129 Packages, 11 Am. L. R., p. 419.]

[C.] Courts of the United States have generally been liberal in the construction of statutes of this kind, and have gone so far as to allow an Informer compensation for expenses incurred, even when he has not been able to bring himself within the terms of the statute. [Ex parte, Cahone & Slocum, 2 Mason R., p. 85; Wescott vs. Bradford, 4 Wash C. C. R., p. 492.]

SECOND.

The Plaintiff in Error brought himself within both the letter and spirit of the act of the 6th of August, 1861. It stands admitted on the Record, that he gave the information upon which the Collector made the seizure in case No. 934. [See Record, p. 37.]

The Court below clearly erred in declaring the law.

The fact that Francis had given the information in the first instance to the Collector, did not affect his rights under this act. It is absurd to suppose, that he could not claim under this act because he had claimed under the act of the 13th of July, 1861.

In order to claim under the act of July, it was necessary to give the information to the Collector that a seizure might be made. Under this act, it was only necessary to give the information to the District Attorney.

The Court also erred in supposing that Francis lost all control over the information, when he *addressed* the same to the Surveyor, and delivered it to him. It was only necessary for the informer to communicate the facts *orally* to the Surveyor, and if in such case the Surveyor acted upon the information it was sufficient to entitle the Informer under the act of July. Now can it be said, that if the Informer goes beyond the strict line of his duty and delivers to the Surveyor a written statement, giving detailed information, that he thereby loses all control over such information the moment it is delivered to the Surveyor? The Surveyor may or may not act upon the information. In neither case is he made the *custodiun* of such information. It may be his duty to conceal the facts until the seizure is made, but not afterwards. If he declines to make the seizure the informer may make it, and if it be on sufficient cause the Government may ratify it. [The Caledonian, 4 Wheat. R., p. 100.]

It was error also to assume that because the letter containing the information was addressed to the Surveyor, *therefore,* the same could not be filed with the District Attorney. The *mere address* of such a letter could neither change the title thereto nor its legal effect. It was still the letter of Francis, the Informer, and the legal effect of its material statement was no greater or less, by being addressed to the Surveyor by name, than if addressed to any other person.

But if the *address* and *delivery* to the Surveyor of the written statement in question, should be held to divest Francis of all legal title to its exclusive control, yet we contend that he had a beneficial interest in it, and that when handed back to him, as it was by the Surveyor, his title reverted, and that thereafter he had the absolute and unqualified control over it, as an original proprietor. There can be no doubt about this position, unless it can be shown that the Surveyor was by law the legal or official *custodian* of such written statement. We think this cannot be shown to be the case, and we assert, that no law exists on the statute book declaring, either in terms or effect, the Surveyor to be the custodian of such documents.

Upon its delivery back to him, Francis was entitled to its control, and had the right to file it with the District Attorney.

[A.] But it was maintained by the learned counsel representing the United States in the Circuit Court, that even if the written statement in question had been handed back by the Surveyor, and Francis thereby invested with its rightful possession and control, and that thereupon Francis delivered it to the District Attorney it does not therefore follow, that these acts amounted to "*the filing of an Information*" so as to constitute him an *Informer* under the terms of the act.

Could Francis do more than hand the letter containing the information to the District Attorney? He could not compel that officer to *file* it. It became the duty of the District Attorney to *file* it in his office. But suppose he either neglected or refused to do his duty, what then? Was the Informer to be deprived of his rights under the act by the neglect or willfulness of an official in that way? It seems to us this position of the learned counsel is too absurd to merit consideration.

[B.] But it is further maintained that the written statement in question does not constitute "an Information," within the meaning of the act. That is, that the word is used in the statute in its technical sense, and means ***"a libel of Information"*** as understood in proceedings under penal statutes.

This is wholly untenable, for it cannot be presumed that Congress intended to limit the benefits of the provision to persons professionally qualified to draw such a "libel of information," when they use the words "any person may file, &c."

THIRD.

The Court erred in wholly dismissing the petition, even though the Informer failed to bring himself within the terms of the act in question.

It stood admitted that Francis had given the information which led to the original seizure, under the writ in case No. 934. He had followed up that information by a vigilant prosecution in the said case, No. 934. He stated in his petition in this case, "that he gave a written statement to R. J. Howard, the Collector of the port of St. Louis, containing information upon which said cotton was seized by said Collector, and subsequently libelled in case No. 934, in said Court."

This was established beyond question by the judgment of the Court itself, admitting him as Informer in said case. (See Record, p. 37.) It was also apparent by a simple comparison of the facts stated in the libel, in this case and those stated in the letter of Francis. ***Not only are the facts indentical, but the very language of Francis in his letter is adopted by the District Attorney in his libel.*** [See p. 3 and p. 34.]

In such a case the Court ought at least to have allowed him for his expenses and labor, which directly contributed to the creation and preservation of the fund—just as a non-commissioned captor is allowed for his services in bringing in and preserving the property. (The Des Hemonos, 10 Wheat., p. 306; The Emulos, 1 Gallison, p. 563; The Mary Ann, Ware's R., p. 99; Brewster vs. Gelston, 1 Paine's, C. C. R., p. 426.)

So a non-commissioned vessel in sight at the time of the capture, although not directly aiding therein, is allowed a share of the prize. [The Brig Recovery, Bee's Adm. R., p. 393; The Sally, 8 Cranch, p. 382.]

So a master, although his lien on the ship for advances be denied, is allowed his lien against the freight and the proceeds in Court. [The Ship Packet, 3 Mason, p. 255 and 334.]

So a vessel carrying enemies' goods may be allowed the freight earned, although the goods be forfeited. [Abbott on Shipping, p. 184.]

[A.] But we contend in this case that Francis having been admitted on the Record as informer against the *res*, could not be divested of his right, whether that was a *jus ad rem* or a *jus in re*, except by due course of law. His rights attached to the *thing*, and followed the *thing* in whatever jurisdiction it might be until defeated. If his right was a *jus ad rem*, it could only be defeated by a prior or superior lien. If his right was a *jus in re*, then, being of a proprietory character derived from the forfeiture, it was of the same dignity with the title of the Government and coincident with it.

[B.] But it is objected that if his admission as Informer in case No. 934, against the *res*, created a lien thereon, yet that such lien having attached under the Act of the 13th of July, was defeated by the superior title of the Government, relating back to the date of the unlawful act which caused the forfeiture. Although it may be doubted whether a title derived from a decree of forfeiture relates further back than the date of the seizure, yet admitting this to be the case, it would not affect the right of the Informer, whose title relates back to the same breach of the act. [United States vs. 1960 Bags of Coffee, 8 Cranch, p. 398. The Maid, *id.* p. 417.]

These decisions, just cited, are based on the terms of the non-intercourse act of the 1st of March, 1809, with which the language of the act of the 13th of July, 1861, is almost identical. The words of the act of the 6th of August are, however, very different. [12 Statute, p. 319.] This act declares the guilty property "*subject to prize and capture wherever found.*"

In Insurance cases it has been held that the title under a forfeiture only related back to the date of the seizure. [Ocean Insurance Co. vs. Polleys, 13 Peters, p. 141; same case, 14 Maine, p. 141.]

So a *bona fide* purchaser without notice is protected against an *antecedent* forfeiture to the United States. [The Mars, 1 Gal., p. 192.]

The forfeiture in this case being had under the Act of the 6th of August, 1861, the title of the Government would not relate back further than the seizure. [The Ship Mangin, 2 Peters, Adm. p. 452.]

Hence the United States having elected to take the forfeiture under the Act of the 6th of August, are *estopped* from claiming a title relating further back than the seizure, according to the decisions we have quoted. But if the Informer acquired a *jus ad rem* by his admission in case No. 934, under the Act of July, then his right related back to the breach of the act, and overreaches the title of the United States, acquired under the Act of the 6th of August. [The Mars, 1 Gal., p. 192; The Mary Ann, Ware, p. 99.]

[C.] But it is only claimed for the Informer in this case, that his right was coincident with that of the Government, and was a *jus in re* of equal dignity with that of the Government itself, and having once vested could not be divested except in the manner pointed out by the law.

FOURTH.

The Court erred in supposing that it was within the power of the District Attorney, by a *pro forma* dismissal of case

No. 934, to ***divest*** the rights of the Informer. It is not pretended that any statute directly grants him such a power. It is, however, claimed as a sort of necessary prerogative of the Government. The same prerogative has been claimed by the Kings of England. But the learned Hallam, in his admirable treatise on the Constitutional law of England, says, "such a prerogative was denied in Kings Charles II and James II time." In speaking of the Declaration of Indulgences by the former, he says: "It was generally understood to be an ancient prerogative of the crown to dispense with penal statutes in favorof particular persons and under certain circumstances. It was admitted that the King might, by what is called a ***noli prosequi***, stop any criminal prosecution commenced in his courts, ***though not an action for the recovery of a pecuniary penalty***, which by many statutes was given to the Common Informer." Hallam 453.

Again he says: "It was agreed among lawyers that the King could not dispense with the common law, nor with any statute prohibiting that which was ***malum in se, nor with any right*** or interest of a private person or corporation." Same, p. 526.

Under the act of 1789, (1 Statute, 92,) the District Attorney's duties are specifically stated to be, "to prosecute delinquents for crimes and offenses cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned."

It is not contended that this act confers any power except what may be embraced within the intent and meaning of the word "prosecute." This may be construed to include the right of dismissal. But it has been maintained on authority of the Schooner Exchange vs. McFadden (7 Cranch, p. 116) that the District Attorney represents the will of the Sovereign in the Courts, and that he will be presumed to act in accordance with the will of the Executive, and that when the sovereignty is interested tha will of the Sovereign is without limitations.

The case certainly does not sustain this broad proposition. That was a case where a public armed ship in the service of a foreign sovereign having entered one of our ports, was attempted to be subjected to our jurisdiction upon the adverse claim of private parties. The District Attorney, Mr. Dallas, filed a suggestion in the case raising the question of jurisdiction and argued the same at length. It was understood to be done at the instance of the Executive. Judge Marshall delivered an elaborate opinion in the case, near the close of which he uses this cautious language: "If this opinion be correct ***there seems to be a necessity*** for admitting that the fact might be disclosed to the Court, by the suggestion of the attorney for the United States."

This is the only judicial authority cited for the assumption of power claimed, and we say it falls far short of sustaining such an assumption. This decision is in substance, that when the rights of a foreign sovereign under the international law, are likely to be affected by the adjudication, both comity and policy would seem to require that some one, in the absence of the foreign sovereign or his representative, should appear, and ***suggest*** to the court the relations of the foreign power to the subject matter of the controversy, in order to avoid an erroneous judgment which might complicate our relations with a friendly power, and that in such a case the District Attorney might appear for this purpose. Only this and nothing more.

(A.) The power of the Secretary of the Treasury, any time before final distribution, to divest the informer's share is admitted under the authority of the United States vs. Morris. (10 Wheat. p. 246.) Although this power had been denied by other courts of very respectable authority. (The Margretta 2, Gal. p. 515.)

And it was subsequently held by this Court, that the informer's share could not be divested *eo nomine.* (6 Peters, R., p. 404.)

(B.) We utterly deny that the District Attorney has any such authority vested in him by any statute or by any supposed prerogative vested in the Executive, under whose authority the District Attorney is presumed to act.

FIFTH.

The courts below erred in allowing the two libels against the same *res* to be prosecuted simultaneously. The libel No. 934. was under the act of 13th of July, and on the admiralty side of the District Court. The libel No. 939, under the act of 6th August, was on the exchequer, or common law side of said Court.

The mode of proceeding on the one side of the Court is inconsistent with the practice on the other side, and the two can not proceed together without confusion on the Record and prejudice to the parties before the Court.

This proposition is fully sustained by reference to the Record in this case. Here we see, that after libel No. 934 had been dismissed and an appeal taken and perfected to the Circuit Court, whereby the fund ought to have been and was .in contemplation of law in said Circuit Court, the District Court, in case No. 939, made an order of distribution to the District Attorney to the sole use of the United States. (See Record, p. 22.)

This we say could not have been done as the *res* had gone up to the Circuit Court, and there was at that time no *res* in the District Court upon which said decree could be based. (See Record, p. 27, 6 Wheat. 194.)

Again the District Court rendered a judgment for freight in case No. 934 for $176 43, on the 5th day of June, and on the 6th of July thereafter, and after said appeal had been taken, ordered said fund to be paid to the Clerk of the Circuit Court in case No. 939. This we say could not have been done for the reason, that even if said fund had not gone up on appeal it was still firmly held in case No. 934 by said judgment against the *res* remaining unsatisfied on the Record in said last named case. (5 Cranch, p. 281.)

SIXTH.

The Circuit Court erred in affirming these irregular proceedings in the District Court, and also erred in affirming the decree of the District Court in *part,* and in the same judgment reversing and remanding the case.

The decree of the District Court should have been affirmed or, if reversed in any particular, it ought to have been remanded to the District Court. In admiralty cases, where a trial *de novo* may be had in the Circuit Court, a liberal intendment should be given in favor of the regularity of the proceedings. (The Water Witch, 1 Black, p. 494.) But even in such case gross irregularities will be held sufficient for reversal. (The Mary Ann, 8 Cranch, p. 380.)

In cases of common law jurisdiction, which go up by writ of error, the proceedings should be governed by the rules applicable to the common law procedure. (Heirs of Wilson vs. Life and Fire Ins. Co., 12 Peters, p. 140; Curtis Com. p. 500, *et seq.*

SEVENTH.

The Circuit Court erred in refusing the motion of the Plaintiff in Error in mitigation of the Record. As the District Court had by its rulings virtually *blended* the two proceedings, and as the two libels were against the same *res,* it was proper that the whole proceeding against the *res* should have been sent up to this Court, so that the Plaintiff in Error could specifically point out on the Record each of the numerous errors complained of. This motion (see Record, p. 40,) ought to have been granted, and the Circuit Court clearly erred in refusing it.

Finally. We maintain that upon a review of the whole case it is apparent that great injustice has been done to the Plaintiff in Error, who rendered meritorious services to the Government. That through his exertions a valuable fund of over $60,000 was brought in and secured to the Public Treasury. That he has not received one cent for his labors and expense in that behalf, although it stands admitted on all hands that he bestowed much labor and incurred great expenses in securing this valuable fund. That he was admitted as Informer under the Act of 13th of July, 1861, by which he became entitled to *one-fourth* of the fund. By the proceedings complained of he has been defeated in that just claim. That by a proper construction of the Act of 6th of August, he would be entitled *to one-half of the fund* in this case. That by the proceedings complained of he is defeated in his distributive share under this act. In addition to all this he has been turned out of Court, not only without remedy but with a heavy bill of expenses to liquidate, and has paid a heavy bill of costs, while the Government alone reaps all the benefits. Of such a result the Informer may justly complain.

And upon his behalf we call upon this Court to correct the errors complained of, and to issue a mandate to the Court below to allow the Plaintiff in error such a distributive share or allowance as in justice and good conscience he may be entitled to receive.

JAMES K. KNIGHT, *Proctor.*

HON. JOHN M. KRUM, *Counsel.*

In the Supreme Court of the United States.

DECEMBER TERM, 1866.

FRANCIS
vs.
UNITED STATES,
No. 152.

In error to the Circuit Court of the United States for the District of Missouri.

BRIEF OF UNITED STATES.

HENRY STANBERY,
J. HUBLEY ASHTON,
For United States.

In the Supreme Court of the United States.

DECEMBER TERM, 1866.

JAMES FRANCIS, Plaintiff in error,
vs.
THE UNITED STATES.
No. 152.

In error to the Circuit Court of the United States for the district of Missouri.

The record in this case is somewhat involved. The suit of the plaintiff in error, who was plaintiff below, was of the nature of an incident to the proceeding in the case of the United States *vs.* 269½ bales of cotton, sundry claimants intervening, in which final decree of condemnation has passed, James Francis, the plaintiff in error herein, having petitioned as an informer in the suit below.

STATE OF THE PLEADINGS.

It appears that a large quantity of cotton, bearing the marks "C. S. A." and other indications of hostile ownership, was seized at St. Louis, Mo., by the United States marshal, by direction of the district attorney, in October, 1862, (Rec., p. 4,) who, on the 13th of that month filed a libel of information against it in the United States district court. This libel was framed under the provisions of the act of Congress of 13th July, 1861, (12 Stat. at Large, 255,) commonly called the non-intercourse act, in which no provision is made for an interest in informers. The case under this libel was numbered on the docket of the court 931. This proceeding was subsequently dismissed, though during its pendency the cotton was sold under an interlocutory order, and the proceeds lodged in the registry of the court. (Rec., p. 31.) Five days after the filing of said libel, another libel of information was duly filed, framed under the provisions of the act of 6th August, 1861, entitled an "Act to confiscate property used for insurrectionary purposes." (12 Statutes at Large, 319.) This case was numbered 939. It was prosecuted to effect. During the progress of the latter, but not, it seems, in the former case, the plaintiff in error petitioned as an informer. (Rec., p. 15.) Upon a full hearing, this petition was dismissed with costs. (Rec., p. 17.) The hearing of the main case terminated in a verdict sustaining the libel, and a decree of condemnation. (Rec., p. 22.) Hereupon the several claimants, and also this informer, united in a bill of exceptions, and the whole matter came before the circuit court upon writ of error. (Rec., p. 22, et seq.) The latter court reversed the decree of condemnation, upon a question of the admissibility of evidence, remanding the cause for further proceedings, but affirmed the decree dismissing Francis, as informer. (Rec., p. 28.) Subsequently, upon a new verdict of the jury, the district court again condemned the cotton, and again dismissed the petition of this informer, with costs. (Rec., p. 31.) Thereupon, the petitioner, upon sundry exceptions, brought his claim again before the circuit court, which the second time, upon hearing, affirmed the decree of dismission of the district court, with costs. (Rec., p. 38.) Finally, upon a writ of error to the circuit court, the petitioner brings his claim into this court.

A motion was made in the circuit court suggesting diminution of record and praying that the record of the case No. 934, and the case No. 939, be annexed. The court refused to annex the former, but ordered that the record of the latter case, being that hereinbefore referred to as prosecuted to effect, be annexed. Accordingly, the record in the present case is identical in the main with that of the United States *vs.* 269½ bales of cotton, &c., (Rec., pp. 37, 38.)

The exceptions, somewhat irregularly brought forward, are printed on pages 24, 25, 29, 32, 39, 40, of the record. They are substantially, that the court erred in refusing to attach the record of the case No. 934; that the dismissal of that case worked the petitioner injury, and that the court erred in rendering judgment upon the evidence, against the petitioner.

It will be observed that the petition of Francis has been four times disallowed upon full hearing, twice by the district and twice by the circuit court, besides motions to set aside judgment, overruled after full argument.

THE FACTS.

It appears that Francis communicated some suspicious circumstances touching this cargo of cotton, in a letter to R. J. Howard, surveyor of the port of St. Louis, which reached him about the 5th or 6th of October, 1862, (Rec., p. 33.) In a second letter to the same party, dated 18th of October, 1862, he enclosed a "report" which was dated the 10th. (Rec , pp. 34–35.) Francis was one of the class of revenue officers known as "revenue aids." The surveyor thereupon seized the cotton, the United States marshal making his seizure the same day. In the testimony of the surveyor, Howard, it does not appear whether or not his seizure was mainly grounded upon the information given by Francis. Howard requested Francis to carry these letters, or the first one, to the district attorney, which was done before the 13th of October. It does not appear from the testimony of the assistant district attorney whether he had prior or other information when Francis brought him said letter. A libel was framed on the 13th of October, under the act of 13th of July, 1861, and filed, the cotton seized by the marshal, and the matter prosecuted. Hereupon, one McPherson furnished the district attorney with a variety of important facts and papers, as did also other parties, and the result was a new libel framed under the confiscation act of 6th of August, 1861, which is the one finally consummated. A reading of the letters of Francis in connection with the libel (Rec., pp. 2, 3, 4) renders it extremely improbable that the latter could have been predicated mainly on the former. The letters referred to and all the other testimony touching this point, are printed on pages 33 and following of the record.

REMARKS.

1. *As this is a writ of error, and not an appeal, all issues of fact are closed against the plaintiff in error in this court.*

(*a*) It results from this proposition, if true, that the assignment of errors in this cause is bad, except as to the denial of motion to reform the record, (Rec , p. 40,) in that the exceptions do not discriminate matters of law from matters of fact. On a writ of error, the trial is not of the action but of the judgment below. It is impossible, without arguing questions of fact, to answer or plead to the assignment: "Because the court erred in rendering judgment against the plaintiff," etc. (Rec., p. 40.)

(*b*) With regard to the exception under the motion to reform the record, we remark that the grounds thereof are insufficient on their face. They are, (1) that the case No. 934, and the case No. 939 were in rem against the same property, and that the plaintiff in error was a petitioner in both cases; (2) that the petitioner was prejudiced by the action of the court in the former case, and (3) that it was necessary to the present suit that the plaintiff in error should have both records here, because they are inseparable. The identity of the property does not import a corresponding identity of the informer's interest, and it appears that in fact he did not petition the court until after the institution of the second suit. (Rec., p. 15.) On the second point, we submit that an informer may not allege injury by the competent action of the court, dismissing, or otherwise ordering in its discretion concerning a prosecution, upon the motion, without fraud, of the counsel of the United States. That the two records "run into each other and are inseparable," cannot be so as to the position of an informer under the latter record, because, even if he had filed a petition in the former, that action did not involve any law under which an informer could have been interested, and consequently, could not have afforded him a standing as a party. Thus, whatever of law may be in it, is inapplicable to him, and whatever of fact may be in it, is inaccessible in this suit on writ of error.

2. *The claim of Francis to an informer's moiety is an afterthought, undertaken because the real informer was concluded by having an adverse interest.*

The policy of the law rewarding the vigilance of informers is aimed at their zeal in *initiating* discovery. It is, therefore, directly opposed to the indulgence of supervening claims, especially where they are created by a substitution of one person for another who is personally disabled.

In this case, it is apparent both from the testimony of the assistant district attorney and from his own, that *McPherson* was the informer, upon whose information the effective suit was instituted. But McPherson was also a claimant for a large part of the cargo. (Rec., p. 11,) and was consequently disabled from claiming as an informer. The circumstance that with a view to a seizure under an act of Congress allowing no reward, Francis had furnished data concerning the same cargo, was laid hold of by him as a means of assuming the merit of McPherson, who, besides a quantity of military and business papers and other data, had furnished the district attorney with written affidavits giving particulars. (Rec., pp. 36, 37.)

3. *But under any hypothesis on this record, the only reward allowed by the law of this case could not have vested in Francis, under the express terms of the statute.*

The statute provides :

" That the Attorney General or any district attorney of the United States in [any district in] which said property may at the time be, may institute the proceedings of condemnation, and in such case, they shall be wholly for the benefit of the United States; or any person may file an information with such attorney, in which case the proceeding shall be for the use of such informer and the United States in equal parts."

(Act. 6th August, 1861, 12 Stat. at Large, 319.)

(a) It is questionable whether in order to have the benefit of this provision, an informer should not have been a party of record joined with the United States in the libel. The language of the statute is that " the *proceeding* shall be for the

use of," etc. Francis, however, is a mere intervenor, at a long subsequent stage. Upon such a view, his acquiescence has of course utterly concluded him.

(*b*) But does it appear that upon his own showing, this petioner is a person who has filed an information with the district attorney? It is not sufficient that a person shall impart information. He shall *file* "an information" It is therefore, to be written, and it is of course to be such that upon a comparison of the paper with the libel of information, the latter may be seen to have depended upon the facts contained in the former. Should such a paper, moreover, be ascertained to have been the earliest vehicle for such facts, the party would stand within the statute.

Now the only writings which are said to have been lodged with the district attorney are those which the petitioner, a subordinate treasury official, was bound by his duty to have addressed to his superior revenue officers, and which were, accordingly, addressed to the surveyor of the port. They were filed with him. That in reaching the district attorney's hands afterwards, even had they aided him in the effective prosecution, which he does not admit, does not inure to the benefit of Francis, but rather of Howard, the surveyor, by whose direction the former, his official inferior, personally delivered them to the district attorney. (Rec., p. 36.) They had become the surveyor's papers, and a part of his official archives, thus officially referred for action.

We have taken questions of fact more or less into consideration in consequence of the obscurity with which the plaintiff in error has indicated his allegations of error in the judgment below.

The judgment below should be affirmed with costs.

HENRY STANBERY,
J. HUBLEY ASHTON,
For United States.